TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~325~~. 72.

TOMAS GARROZI, JUANA MARIA GONZALEZ, AND DOMINGO PIAZZI, APPELLANTS,

vs.

JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

FILED JULY 5, 1905.

(19,829.)

(19,829.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1905.

No. 327.

TOMAS GARROZI, JUANA MARIA GONZALEZ, AND DOMINGO PIAZZI, APPELLANTS,

vs.

JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

INDEX.

	Original.	Print.
Caption	1	1
Record from district court of Ponce	1	1
Petition	1	1
Proceeding	11	8
Filing	11	8
Service	11	8
Notification	11	8
Act of conciliation	12	8
Notification	13	10
Service	14	10
Notification	14	11
Proceeding	14	11
Notice of transfer	16	12
Supplemental record from district court of Ponce	16	13
Bond for removal	17	13
Petition for removal	18	14
Clerk's certificate	19	15
Joint answer and plea	19	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 11, 1906.

	Original.	Print.
Agreement of counsel as to petition for removal	22	18
Motion to amend petition for removal	23	18
Opinion on motion to remand	23	18
Order overruling motion to remand	24	19
Stipulation as to time to plead	24	20
Additional record from district court of Ponce	25	20
Letter of presiding judge	25	20
Petition of Juana Maria Gonzalez for removal	25	20
Petition of Domingo Piazza y Pietri for removal	27	21
Bond for removal	28	22
Reformed bill of complaint	28	23
Subpœna	34	27
Marshal's return	35	28
Demurrer to bill	36	29
Joint answer and plea	37	30
Answer, plea, and demurrer of Quintin Ramirez	40	32
Motion for leave to amend bill	41	33
Amendments to bill	42	34
Motion to strike out pleas	42	34
Submitted on pleas	42	34
Motion to strike out plea and demurrer of Q. G. Ramirez	43	35
Motion to strike out plea of Domingo Piaza *et al*	43	35
Motion for leave to amend bill of complaint	44	36
General replication to answer of Q. G. Ramirez	45	37
General replication to answer of Tomas Garrozi *et al*	45	37
Order postponing hearing of motions to strike out pleas, &c	46	38
Stipulation as to pleadings, &c	47	38
Opinion, March 16, 1904	47	39
Motion to appoint examiner	49	41
Order appointing examiner	50	42
Amendment to answer to amended bill	50	42
Telegram from Dexter to Boerman	51	43
Order for a commission to take testimony	51	43
Order extending time to take testimony	52	44
Stipulation extending time to file testimony	52	44
Order extending time to file testimony	53	45
Commission to take testimony abroad	53	45
Deposition of Domingo Piazza received and filed	55	47
Order filing report of testimony	55	47
Motion to suppress deposition of Piazza	55	47
Additional motion to suppress deposition of Piazza	56	48
Exceptions to report of examiner	56	48
Motion to strike out testimony ot Josefa and Luisa Dastas	57	49
Order sustaining motion to suppress deposition	58	50
Order appointing special master	58	50
Motion for leave to amend bill in matter of form	59	51
Order referring motion to amend to special master	64	56
Report of special master on motion to amend	65	57
Exceptions of complainant to report of special master	66	58
Motion for leave to withdraw replication and amend	67	59
Order sustaining motion to amend bill	69	60
Amended bill of complaint	70	61
Plea to amended bill	78	68

	Original.	Print.
Order referring plea to special master	79	66
Report of master on sufficiency of plea	79	66
Exception to report of master on plea	79	67
Motion to confirm master's report on plea	80	67
Plea filed November 3, 1904	81	68
Answer to amended bill	82	69
Motion to strike plea from files	86	72
Motion to strike answer from files	87	73
Order to refer certain pleadings to special master	87	73
Order of master upon motions and exceptions	88	74
Order filing general replication, &c	89	75
Replication	90	76
Stipulation as to evidence	91	77
Finding of fact and law by special master	92	78
Exceptions of complainant to master's report	102	85
Exceptions of defendants to master's report	104	86
Order overruling exceptions	107	89
Final decree	108	89
Order awarding an allowance to complainant for expenses of litigation, &c	112	92
Motion for extension of time to file bill of exceptions	114	93
Order fixing amount of supersedeas bond	114	94
Order extending time to file bill of exceptions	114	94
Petition for appeal	114	94
Assignment of errors	115	95
Order allowing appeal	127	105
Bond on appeal	127	105
Order approving bond	129	106
Petition to extend time to prepare record, &c	129	107
Order to extend time to prepare record, &c	130	108
Statement of the facts of the case and of the rulings of the court on the admission or rejection of evidence and exceptions thereto	130	108
Clerk's certificate	150	124
Citation and service	152	124
Motion for receiver and injunction	154	125
Order appointing receiver, &c	157	128
Order designating receiver	160	129
Motion for discharge of receiver	160	130
Order granting time to answer motion	161	131
Order overruling motions to discharge, &c	161	131
Order appointing C. A. Teller receiver	162	132
Clerk's certificate	162	132

1 In the District Court of the United States for Porto Rico.

JUANA DASTAS DE GARROZZI
vs.
TOMAS GARROZZI Y PIETRI, DOMINGO PIAZZI Y PIETRI, and JUANA MARIA GONZALEZ.

(Removed from the District Court of Ponce, P. R.)

Record From the District Court of Po-ce, P. R.

(Filed January 13, 1902.)

To the Honorable District Court of Ponce:

I, Luis Llorens Terres, lawyer, representative of Mrs. Juana Dastas, who is married and of age and a resident of this city, appear before your Court, and in accordance with the precepts of the law, I state:

That I bring the present suit against Mr. Thomas Garrozi y Pietri, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, all of whom are of age and residents of Yauco, for nullification or rescission of contract of purchase and sale of real-estate and mortgage credits. Said suit I establish on the following facts:

First. Mr. Tomas Garrozzi y Pietri and Mrs. Juana Dastas contracted cannonical matrimony at Yauco on the twelfth of May, *May*, 1886, without stipulating the conditions of the marriage union, for which reason said matrimony is understood to have been contracted under the legal rule of marriage profits—Mrs. Dastas dwelt at the domicile of her husband until the 28th of November 1898, at which date, on account of disagreements which occurred between husband and wife they became separated in fact, without judicial intervention.

Second. At the time at which Mrs. Juana Dastas left her domicile, or rather separated from her husband they possessed deeds registered in the name of the husband acquired during the nuptial union viz; the following property:

2 A. Two masonry houses located in Borinquen street, Yauco, No. 40 and 42 of the Municipal register.

B. A plantation dedicated to sugar cane named Maria Antonia located in the barrios of Guanica and Susua Baja of the municipal district of Yauco with houses for steam engines and for sugar cane, sugar house and other appurtenances, which property he acquired by *pacto de retro*, or conditional sale in favor of Mr. Gustave Ramirez de Arellano and his son Mr. Quintin G. Ramirez for the price of 80,135 pesos P. R. Currency, which the sellers could return at the end of eight years, due 1907.

C. A mortgage credit on the coffee plantation called Luisa, located in the Barrio of Rancheras of Yauco for the price of 20,000 pesos P. R. currency, which he purchased from Marcial Santoni y Ortiz,

which mortgage credit, together with other two of the same kind which the owners of the same plantation were owing, (which owners were Mr. Tomas Olivari Santo and his mother Mrs. Adela of the same name) became a full lien on said property in favor of Garrozi in consequence of a suit of ejectment which he brought against them in order to establish his credit.

D. Another mortgage credit for 23,680 pesos P. R. currency upon the coffee plantation named Leonor in the Barrio of Aguas Blancas en Yauco, belonging to Mr. Francisco Mejia y Rodriguez.

E. Another credit of 12,000 pesos P. R. currency secured by a mortgage upon the coffee plantation named Juanita in the same Barrio of Aguas Blancas of Yauco, the property of Mr. Isidoro Pintado.

F. Another mortgage credit of 10,470 pesos 30 cents P. R. currency upon the coffee plantation named "Mercedes" which is composed of three portions or parcels of land, two of which are located in the bar-io Pasto of Guayanilla and the other portion with a surface of 24 cuerdas located in the barrio of Aguas Blancas of Yauco belonging now to Mr. Mercedes Lluveras.

All these plantations and mortgage credits were inscribed or registered in the name of Mr. Tomas Garrosi y Pietri in the register of property in the district of San German, except the two portions of land which form part of the plantation Mercedes which are located in the barrio Pasto of Guayanilla, which were in the register
3 in this district. The aforementioned property was acquired during the matrimony of Mrs. Juana Dastas.

Third. At the latter part of the month of December 1899, Mr. Garrosi began to prepare certain data which he considered necessary to unjustly bring criminal suit for adultery against his spouse, and doubtless he determined also to transfer his goods to other persons in order to save himself the responsibility which might arise against him from taking such steps.

And this he did in respect of the two masonry houses mentioned in paragraph letter A. of fact two, of this writing by transferring them to his natural sister Juana Maria Gonzalez, through public instruments before the Notary of San German, Mr. José R. Nazario de Figuerea, on the 26th of December, 1899, in which he confessed as having previously received the price of the sale, namely 6,000 pesos P. R. currency as stipulated as the said price of the city property.

Fourth. There was a suit before the District Court of Ponce brought for adultery interposed by Garrozi against his wife and Miguel Angel Rivera, a verdict being found acquitting the accused on the 17th day of February, 1900. At that time Mr. Tomas Garrosi registered in the name of his mentioned natural sister Juana Maria Gonzalez on the 28th of May, 1900, and before the Notary of Yauco Mr. Manuel Silis, the sugar plantation Maria Antonia mentioned in said fact No. 2 of this suit under letter B making its alienation for the sum of 48,000 dollars which Garrosi confessed to have received, reserving Messrs. Ramirez the right which they had in

virtue of *pacto de retro* stipulated in the purchasing deed of said property.

Fifth. Afterwards Mr. Garrozi ceded in favor of his uncle Mr. Domingo Piazza y Pietri the mortgage credits and titles which are related in the paragraphs letters C, D, E, and F of fact No. 2 of this writing, alienating them in the following manner: Through public instrument in Yauco before the Notary Mr. Manuel Selis on the 1st and fourth of August of the year 1900 he transferred to Piazza the mortgage credit and the titles upon the plantation "Luisa" mentioned in paragraph letter C, through another deed of the
4 second of the same month of August 1900 and before the same notary of Yauco, Solis, he transferred to said Piazza the mortgage credit, upon the plantation Leoner referred to in paragraph letter D.—Through another deed on the first of August 1900 he transferred to the same Piazza before the notary Solis of Yauco the mortgage credit of the plantation Juanita referred to in paragraph letter E—and through writing in Ponce on the 31st of July of the same year 1900 before the notary Mr. Rafael Leon y Paz, he transferred to Piazza the mortgage credit upon the coffee plantation Mercedes, referred to in paragraph letter F.

Sixth. After the alienations which appear to have been made by Garrezi to his relations Juana Maria Gonzalez and Domingo Piazza, he has continued in possession, administration and enjoyment of the property sold, and in order to cover these acts with the apparent fact that he is not the owner of it, he obtained general powers of attorney from both purchasers, which mandates appear in public instruments.

Seventh. Mr. Thomas Garrezi y Pietri, with the general power of attorney granted to him by Juana Maria Gonzalez, sold back to Mr. Quintin G. Ramirez y Ramirez, through public deed in this city before the notary, Mr. Angel Acosta Quintere, on the second of July of the present year, the sugar plantation Maria Antoniam, and received before said notary and the instrumental witnesses, the price of 48,000 dollars, part of which he spent in buying drafts on Europe, which he obtained from the Banco Credito y Aherro Penceno of this city, which drafts he obtained and were drawn in his private name; and afterwards he also sold in his own name other drafts against the funds derived from that sale which he had deposited in Paris. This fact comes to corro-bate in part the affirmation which will make about similation of these contracts.

On the other hand, neither Juana Maria Gonzalez nor Domingo Piazza who figure as purchasers of all the property belonging to the consorts Garrozi-Dastos, have paid the price of the purchase. Nor is it true that they have acquired such plantations and credits;
5 for the first of said persons who have lived since she was very young under the protection of Garrozi, sometimes in the capacity of a sister and lately in the capacity of a house keeper, despite her simulated condition of great prop-ietress has never been able to dispose of other means of subsistence nor has she had any other resourses, than those granted to her by Mr. Garrozi and his spouse.

And Mr. Piazza, who is first uncle of Mr. Garrozi arrived at this country a short time ago in such conditions of poverty that his passage from Corsica to Yauco was paid with the funds which the same Mr. Thomas Garrozi sent to him to that effect.

From all of which it is very apparent that Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza have been and are actually insolvent, and therefore it is impossible that they could have paid the sums which Garrozi has confessed in his deeds to have received from them before the execution of the same and as a price of the plantations and credits sold. A good proof that the contracts are simulated is offered to us by the same Mr. Garrozi, who in spite of such contracts, continues in possession of the plantations, and exercises on them acts of administration in his own proper name, making contracts for the purpose for preserving and improving same, not in the capacity of attorney in fact for other persons, but as real owner of the same plantations. We shall show that one of the houses that he transferred to Juana Gonzalez which was almost destroyed by a fire which has lately occur-ed at Yauco, has been reconstructed at the expense of Garrozi, who lives in it, after acquiring in his private name the necessary materials for its reconstruction, and after having contracted and paid the working-men with money from his private purse.

He has also in his private name advance several claims against the heirs of Mr. Francisco Mejias for the reason of the suit of ejection which he has brought for the collection of the mortgage credit which to-day appears in the name of Mr. Piazza: That in the same manner he has performed other acts in the plantation Luisa after its appearing as sold, which undoubtedly proves the simulation of contract as above mentioned.

6 Moreover Mr. Tomas Garrozi who says to have received the amount of the registered sales nevertheless, when he was officially required to furnish with alimony as requested by the Court to his wife, has stated that he is absolutely without a cent and without property of any kind, which would be impossible if he had really received the payment of the sales above mentioned which amount approximately 150,000 pesos P. R. currency; said Garrozi not even receives salaries of any kind or retribution as commanding administrator of the rich property which is said to belong to Juana Gonzalez and Domingo Piazza, who are publicly and notoriously known to be only instruments in the hands of Garrozi to conceal the property of the married union with the prejudice of the legitimate rights of his spouse.

Eight. Mr. Tomas Garrozi and Mrs. Juana Dastas separated in fact without judicially intervention and on account of disagreements as we have already said on the 28th of November, 1898.—At that time and by order of her husband Mrs. Juana went to live with her sisters Luisa and Josefa Dastas in a house which her husband loaned to them, and there she remained until the 22nd. of December of the following year when she removed to the city of Ponce.—For this reason on the 12th of January 1900, Mr. Tomas Garrozi formulated a criminal suit of adultery against his wife and the case

was tried before this Court, being acquitted of said charges on the 17th of February of the same year.—On the 21st of May of the current year Mr. Tomas Garrozi brought suit for divorce from his wife before this Court of justice and as the defendant formulated a reconvention founded on the adultery of her husband and ill treatment by word and deed, said proceedings are now pending, in virtue of which the wife is deposited in accordance with the provision of the law and she had to receive, according to judicial mandate 75 dollars payable each month in advance as alimony for her maintenance, in accordance with the decree dated the 15th of July of the present year.

In the same proceedings, and by resolution of the 15th of July last, there was declared the right of the defendant to per-
7 ceive legal expenses for the divorce suit. In order to make the first monthly payment of alimony effective, there was attached against Garrosi certain furniture of the marriage domicile, which was claimed to belong to Mrs. Juana Maria Gonzalez, on account of the sale which the same Garrosi had made to her through an-extra judicial and private document; but this third claim has been declared to be null and of no effect, and in consequence legal proceedings were taken against the furniture which was finally adjudicated to Mrs. Dastas for the payment of the seventy five dollars above mentioned. She remains still without receiving the alimony for the last four months, because in the requirements against the husband for payment he appears insolvent, as he has alienated all his property, or most of it, during the beginning of the month of August 1900, at which time he was legally obliged to grant alimony to his wife, inasmuch as he had already placed her under criminal proceedings as above mentioned.

Ninth. Mr. Garrosi owes therefore to his spouse the alimony for the months of July to September of the present year, which, according to the investigation of the Court, amounts to 225 dollars. There is owing to her also the sum of 598 pesos P. R. currency, which is the amount of the account of the legal expense approved by the Court in the suit of divorce until the 7th of August last besides the expenses which have been incurred afterwards in said suit; and no pr-perty is found in his name to satisfy that sum which he obstinately refuses to pay. In virtue of what we have stated above Mrs. Juana Dastas is bound to ask for the annulation or rescission of the contracts made between the defendants, and she founds her petition on the following presepts of law:

1st. A married woman needs no license to sue or defend herself in suit with her husband. Article 60 of the Civil Code.

2nd. In default of a contract on property, the marriage is understood to have been contracted under the rule of marriage profits. Article 1315.

3rd. Those are marriage profits which have been acquired
8 by hard work during the marriage at the costs of the common fund, even if the accusation has been made by one only of the consorts, and the produce, rents and interests received during

the marriage, even if they proceed from the private property of each one of the consorts. Article 1401 Civil Code.

4th. The husband is the administrator of the marriage profits, and besides the powers which he has as administrator he shall be able to alienate and bind or lien all the goods or property of the marriage profits without the consent of the wife.—Nevertheless any alienation or agreement made upon said goods or property by the husband in contrevention of this code, or in order to defraud the wife shall not prejudice the latter or her heirs. Article 1412 and 1413 of the Civil Code.

5th. There is no contract unless there exists among other requisites the cause of the obligation by which it is established. And in contracts where property is involved, the cause for each contracting parties shall be understood to mean the loan or promise of a thing or service by the other part-. Article 1261 and 1274 Civil Code.

6th. The contract without cause or with illicit cause, produce no effect of any kind. Article 1275 Civil Code.

7th. The expression of a false cause in the contracts shall produce nullification. Article 1276 Civil Code.

8th. The contracts may be annulled whenever they have some of the defects which invalidate them according to law. Article 1300.

9th. The action for nullification of contracts may be exercised by those who are bound principally or subsiderally in virtue of them. Article 1302 Civil Code; but this precept does not exclude the right of those third parties who may exercise this action of nullification whenever they are prejudiced by the obligation.—Sentence or judgment of the Supreme Court of Spain dated September 23rd, 1895.

10th. The contracts validly made may be rescinded in cases provided by law.—and among others are rescindable those contracts made to defraud the creditors when these cannot collect what
9 is owing to them in any other way.—Article 1290 and 1291 Civil Code.

11th. Although the action of rescission and that of nullification are incompatable, this is not so when the rescissory action is formulated subsiderally and *at cautelam* in case that of nullification does not have effect. Sentence of the Supreme Court of Spain on the 28th of January 1892.

12th. The creditors m-y inpu*ung* the acts which the debtor may have carried out in defraud of their rights. Article 1111 of the Civil Code.

13th. He who has acquired in bad faith things ali*ane*ted by defraud of the creditors shall indemnify the latter for the damages which said alienation may have costs to them, whenever through any cause it were impossible to return said thing. Article 1293 Civil Code.

14. The contracts upon the transfers of title of property made after the abolition of the impost of the Royal Dues without cause or with illicit cause according to laws, and with the intention of defrauding the creditors of any of the contractors upon said goods or property shall be reputed simulated contract. Article 1st of the Judicial Order of the 28th of March 1899.

15. The simulated contract or those celebrated with false cause, are contrary to law. Judgment of the Supreme Court of Spain 31st of October 1865.

16. The costs shall be paid by those parties whose pretentions have be*ing* totally rejected. General Order 118.

Wherefore, exercising first the action of nullification and *at cautelam* that of rescission of the contracts above mentioned which action are of my competence as legitimate wife of Mr. Tomas Garrozi, as well as creditors of the same gentlemen; and in vertue of the foregoing facts and legal precepts,—I pray the Court to admit this writing with the three accompan-ing copies and to consider this suit of nullification or rescission against Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, as interposed be good enough to accept me as the party in the representation which I show, order a notification of this suit to the de-
10 fendants summon*ong* them by means of decree to be issued to the Municipal Court of Yauco where the parties reside, in order that they may appear to answer it if they deem it right within twenty days, and in due time to dictate sentence declaring the nullification of the contracts of purchase and sale made through public instruments referred to in this writing; or, if said nullification was deemed to be wrong, do declare them valid the rescission of the same contract with the imposition of the costs in each case upon the defendants, as this is in accordance with justice and right.

Item 1. It is right and I pray the Court to be good enough to receive this suit for trial in due time.

Item 2. In accordance with article 42 of the mortgage law, the complainants desire that this present suit be noted down in the registrar of property in order to avoid that the property, the ali*an*ation of which is impu*n*ged in this suit, be transferred to a third party and I pray the Court to be good enough to agree to these proceedings ordering a duplicate mandate to be issued to the Registrar of P*o*rperty of San Geman in order that he may take the corresponding note of this suit and mark it in the entries of registration of the property and mortgage rights mentioned in fact No. 2 in this writing, under the letter- A, C, D, and E; and the part located in that District of the property comprised in the paragraph letter F; and another mandate to the Registrar of this City for an *i*qual annotation in respect of that part of the property letter F, which is located in the Barrio Pasto of Guayanilla, belonging to this District, this is justice which I ask.

Item 3. The annotation of this suit in the Registrar of property is so urgent that my client has been obliged to present it without having previously tried the act of conciliation in accordance with Article 459 of the Civil Code, for fear of seem her rights trampled upon by a new simulated sale.—Wherefore I pray the Court to be good enough to grant the annotation sol-cited and to order the issuance of the nec*a*ssary mandates without prejudice of suspending the costs of the proceedings until the certification of the act of
11 conciliation provided for the continuation of the declarative judgment be presented.

Item 4. In accordance with the provision Article 1408 of the Civil Code, and the jurisprudence which regulates the rights and regulation of the consorts the husband has to pay to the wife the amount of the expenses incurred in the law suits which she may feel herself compelled to sustain in defence of her rights, therefore it is right and I pray the Court to be good enough to consider the position for expenses for this suit as having been made, and to grant that Mr. Tomas Garrozi as administrator of the marriage union with Mrs. Juana Dastas pay to her the expenses necessary for the carrying out of this suit.

Item 5. I appoint as agent for this business Mr. Manuel Catala, and I pray the Court to be good enough to accept his appointment in accordance with the law.

This is justice which I ask of Ponce on the 4th of October 1901.

Respectfully, LUIS LLORENS TORRES.

Proceeding.

The above has been presented together with a simple copy to-day October 4, 1901 at the last hour.—I certify.

GAUTIER.

Filing.

The above was filed under number 341 on the 7th day of October to which I certify.

GAUTIER.

Service.

Ponce October 10, 1901.—The above writing has been presented with the simple copies which accompany it and as the reason given on the third item is not acceptable, when the act of conciliation comes about, the principal and other items it shall be provided for.—It was agreed and signed by the judges of the Court to which I certify.

ISIDORO SOTO NUSA,
R. SANCHEZ MONTALVO,
CARLOS FRANCO SOTO,
LUIS GAUTIER.

Notification.

On the 18th of October, I notified attorney Llorens of the foregoing proceeding.

Signed and certified. LUIS LLORENS TORRES.
RODRIGUEZ.

Mr. José Manuel Justo y Sans Secretary of the Municipal
12 Court of Yauco, do certify that in the books of acts of conciliation corresponding to the act of this present year there is one which copied literally says as follows:—

No. 7 at Yauco. On the 29th day of October 1901, before the Municipal Judge Mr. Juan Mattei Rodriguez and before me the Secretary there appeared Mrs. Juana Dastas, who is married of age, a r-sident of Yauco, residing at present at Ponce, on account of her being judicially deposited, accompanied by her guardian Mr. Manuel Catalá Dueña, of age, widower resident of Ponce, in order to hold an act of conciliation with her husband Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri; the two first one being domiciled at Beringuen St. of this town and the last one in the barrio of Rancheras of this municiapl district, in order that they may agree to the nullification and rescission of the sales made by Garrozi to *to* Juana Maria Gonzaleez, in a deed of the 26th *od* December 1899, before the notary of San German, in respect to the two city properties located in Beringuen St. of the town of Yauco, and in respect of the sugar estate "Maria Antonia" in the barioes of of Guanica and Susua-Baja by deed at Yauco, before the notary Solis on the 28th of May 1900; as well as of the other sales made by Garrozi to Piazza of the coffee estate Luisa through public instrum*e*nt at Yauco on the 1st of August 1900, of mortgage credits upon the estates "Leonor and "Juanita" located in the barrio of "Aguas Blancas" of Yauco sold through deed on the 2nd and 1st of August 1900 respectively, before the same notary of Yauco Mr. Manuel Solis and of another mortg*e*g- credit upon the plantation Merceres in the Barrio Aguas Blancas of Yauco and Pastos of Guayanilla ceded to Piazza through deed before the notary at Ponce Mr. Rafel Leon on the 31st of July 1900; and in which sales he confessed to have received the price. And inasmuch at the hour of 2 in the afternoon, appointed for this act, has expired, and the defendants Mr. Tomas Garrozi y Pietri Mrs. Juana Maira Gonzalez and Mr. Domingo Piazza y Pietri have not appeared, nor have they stated just cause for their non-appearance the Municipal Judge in
13 accordance with articles 468 and 472 of the law of civil proc*e*edure put an end to the act tried without effect condemning the defendants to the payment of the costs and ordering that the present proceeding be drawn up, a copy of which certification shall be given to the party who may ask for it.—Signed by those who were present*s*, then by the Judge before me to which I certify.

J. MATTEI.
JUANA DASTAS.
M. CATALA.
J. M. JUSTOS.

It corresponds well and faithfully with the original or its contents to which I refer.—And in order to deliver to Mrs. Juana Dastas at her request I issue the present approved by the Municiapl Judge of Yauco on the 29th of October 1901. Approved, the municipal Judge.

J. MATTEI.
J. M. JUSTOS.

(There are several stamps.)

To the Court:

I, Luis Llorens Torres, attorney for Mrs. Juana Dastas, in the declarative suit which -he has began against her husband Mr. Tomas Garrozi, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri about nullification or rescission, in accordance with legal proceedure I declare, that by decree of the 10th of the current month, issued on the initial writing of this suit, it was agreed to act without providing for the principal and other items, until the act of conciliation which had to be done previously which was not accompanied with the suit, might be presented. Now inasmuch as this legal requisite has been fulfilled, I accompany this writing with a certification sh*w*oing that there has been tried without effect before the munici*ap*l Judge at Yauco the conciliation relative to this premises; and I pray the Court to be good enough to accept as complimented the precepts of previous conciliation provided in Article 459 of the Civil Proceedure; and in consequence to provide what has been solicited in the writing of the suit presented on the 4th of the present month.—This is justice which I ask at Ponce, on the 31st day of October 1901, respectfully.

LUIS LLORENS TORRES.

The foregoing has been presented to-day the 2nd of November of the present year with the certification of the act of conciliation to which I cer-ify.

GAUTIER.

Notification.

On the 4th of November, I gave an account to the Court to
14 which I certify.

GAUTIER.

Service.

Ponce, November 4th, 1901.—The foregoing writing has been duly represented with the certification of the act of conciliation accompanying it; let it be united with the respective proceedings and in providing for the writing for the 4th of October ultimo, the declarative suit in which the attorney Luis Llorens Tores takes part in the name of the person from whom he appears, is hereby established. Service of the same is hereby given to Mr. Tomas Garrozi y Pietri Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri in order that they may file a reply within 20 days, during which they shall also appear in the proceedings; let there be an order issued to the municipal Judge of Yauco in order that he may summon the defendants.

To the first item in due time—To the second item—

Considering that the object of the suit is not comprised in any of the cases marked in Article 42 of the mortgage law, and 88 of the regulations for its execution, there is no ground for the annotation of the suit.

There is no ground for what has been solicited in said item.

To the 5th item, the agent for attorney Mr. Llorens, is hereby appointed namely, Mr. Manuel Catala, and the associate Judge Rafael Sanchez Montalvo, is appointed as Judge instructor. It is agreed — and signed by the Judges of the Court to which I certify.

ISIDORE NUSA.
R. SANCHEZ MONTALVE.
LIBERTAD TORRES GRAU.
LUIS GAUTIR.

Notification.

On the 6th of Novemb-r, when the agent Mr. Catala appeared at my office I notified him and read to him a copy of the foregoing decree.

Signed and certified to.

N. CATALA RODRIGUEZ.

Proceeding.

On the 8th of November, the letter of mandate was issued and sent to Yauco and was delivered to the agent Mr. Catala for his direction.

Signed and certified to.

MANUEL CATALA RODRIGUEZ.

To the Honorable District Court:

15 I, Luis Llorens Torres, attorney for Mrs. Juana Dastaas, in the declarative suit brought against Mr. Tomas Garrozi, Mrs. Juana Maria Gonzalez and Domingo Piazza about the nullification of rescission of contracts, in accordance with legal procedure, state: That I have been notified of the decree of the writing on which I formulated this suit; and inasmuch as there has been an omission to provide for the petition of the expenses of the suit, comprising the 4th item of said writing I pray the Court to be good enough to admit the petition for expenses of this suit and to grant that Mr. Tomas Garrozi as administrator of the marriage union with my representative, provide her with the expenses which -he has solicited in the 4th item of the writ of suit which I refer.—This is justice which I ask at Ponce, on the 7th of November 1901.

Respectfully, LUIS LLORENS TORRES.

The above has been presented to-day the 11th of November at the last hour to which I certify.

GAUTIER.

On the 12th of November I notified the Court to which I certify.

GAUTIER.

Ponce, November 12th 1901.—The foregoing writing was presented; let it be united with the respective proceedings and considering that the expenses occasioned by the suit which the wife may

have against the husband, have to go the charge of the marriage profits (Article No. 408). The petition for the expenses for the suit are hereby allowed, ordering the expenses which have to be incurred hereafter be justified and regulated in accordance with law. It was agreed and signed by the Judges of the Court, to which I certify.

ISIDORO SOTO NUSA.
R. SANCHEZ MONTALVE.
CARLOS FRANCO SOTO.
LUIS GAUTIER.

On the 22 of November I notified the agent Mr. Catala of the foregoing decree.

Signed and certified to.

M. CATALA RODRIGUEZ.

I, the undersigned acting Secretary her-by certify, that the foregoing copy is accurate in all its vouchers which exist in the declarative proceedings which are on file at this Secretary's office by Mrs. Juana Dastas against Tomas Garrozi y Pietri, Mrs. Juana Maria Gonzalez and Mr. Domingo Piazza y Pietri, about the nullification of contracts; and that the estate of these proceeding- at this date is that which is indicated by the last proceeding inserted.

16 I likewise certify that at this date namely, the 7th of the present month, Lawyer Chas. M. Boerman, presented the writing to the Court praying that it inhibit itself from taking cognizance of these proceedings in favor of the District Court of the United States in Puerto Rico, which petition is now pending before the Court.

And at the request of Lawyer Boerman, I issue the present document at Ponce, on the 11th of January 1902.

(Sig.) GUSTAVE RODRIGUEZ.

There are two revenue stamps cancelled and also the stamp of the District Court of Ponce.

The foregoing is a true and faithful translation of its original to which I certify.

Z. VALS SPINOSA,
Interpreter, U. S. District Court for Porto Rico.

Notice.

(Filed Jan. 14, 1902.)

In the United States District Court for Porto Rico.

JUANA DASTAS DE GARROZI
vs.
TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

You will please take notice that on the 13th day of January 1902, the above entitled cause was duly transferred from the District

Court of Ponce, to the United States District Court for Porto Rico, and that the record in said cause has this day being duly filed in the said United States District — for Porto Rico.

Dated 13 of January 1902.

C. M. BOERMAN,
Attorney for the Defendants.

To the Attorney for the plaintiff Luis Llorens Esq.

Copy.

Supplementary Record on Removal From Ponce District Court.

(Filed Jan. 15, 1902.)

In the District Court of Ponce.

JUANA DASTAS DE GARROZI
vs.
17 TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

Know all men by these presents, that we, Tomas Garrozi as principal and Martin Fernandez and Carlos Lopez de Tord residents of Ponce, Porto Rico, as sureties are held and firmly bound to Juana Dastas de Garrozi, plaintiff in the above entitled cause her successors and assigns in the sum of Three Hundred Dollars lawful money of the United States of America, for the payment of which, well and truly to be made we, and each of us bind ourselves and ea-h of us our heirs, executors, and administrators jointly and severally by these presents.

The conditions of the obligations are: such that, whereas the said Tomas Garrozi y Pietri has applied by petition to the District Court of Ponce for a removal of a certain cause therein pending, wherein Juana Dastas de Garrozi, is plaintiff and Tomas Garrozi y Pietri Domingo Piazza y Pietri and Juana Maria Gonzalez are defendants, to the U. S. District Court for Porto Rico, for further proceedings on the grounds in said petit-on set forth and that all the proceedings in the said Court at Ponce shall be stayed.

Now therefore, if your petitioner the said Tomas Garrozi y Pietri shall enter in said U. S. Court on or before the 1st day of the regular session a copy of the records of said suit and shall pay all costs that be awarded therein by said U. S. Court if said Court shall hold that said suit was wrongfully removed thereto, then this obligation shall be void, otherwise to remain in full force and effect.

(Sig.) TOMAS GARROZI,
(Sig.) MARTIN FERNANDEZ,
(Sig.) CARLOS LOPEZ DE TORD.

Signed subscribed and sworn before me this 11th day of Jan. 1902.

(Sig.) RICARDO NADAL,
Clerk U. S. Dist. Court of Porto Rico,

(Sig.) A. AGUAYO, *Deputy Clerk.*

(Copy.)

District Court of Ponce.

JUANA DASTAS DE GARROZI
against
THOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

18 The petition of Tomas Garrozi y Pietri one of the defendants in the above entitled action respectfully shows:

That said action is a suit of a civil nature of which the District Court of the United States for Porto Rico has original jurisdiction and has been brought and is now pending in this Honorable Court and has not yet *being* tried nor has the time for the defendants to appear plead or answer expired, and the matter in dispute exceeds exclusive of interest and costs the sum and value of ten thousand dollars. That said suit is a controversy between said Juana Dastas who is through her marriage of the nationality of her husband a citizen of France and between the defendants of whom you- petitioner is one and that your petitioner at the time of the commencement of *a* said suit has been and stil- continues to be a citizen of France.

That by reason of the premises this petitioner desires and is entitled to have said suit removed to the said United States District Court for Porto Rico. That the petitioner has not yet filed any defense and that he has not applied for any inhibitory proceedings.

Your petitioner herewith presents the bond provided by statute in such cases.

Your petitioner therefore prays that this Court proceeds no further therein, except to make the order of removal as required by law and direct a transcript of the record herein to be made for said U. S. Court.

(Sig.) CHAS. BOERMAN,
Defendants' Att'y.

Tomas Garrozi y Pietri on oath says: I am the petitioner in the above written petition and I have heard it read and that the same is true of my own knowledge except as to matters alleged on information and belief and as to such statement I believe it to be true.

(Sig.) TOMAS GARROZI.

Subscribed and sworn to before *be* this — day of January 1902.

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Martin Fernandez and Carlos Lopez de Tord, the sureties named in the foregoing bond, on oath each for himself says as follows:

19 I am the same person whose name is subscribed to the foregoing bond and I state that I am a house holder and resident of the municipality of Ponce in the District aforesaid, and that I am worth the sum of three hundred dollars named therein as a penalty thereof over and above my just debts and liabilities exclusive of property which is exempt from execution.

(Sig.) MARTIN FERNANDEZ,
(Sig.) CARLOS LOPEZ DE TORD.

Subscribed and sworn to before me this 17th day of January 1902.

RICADO NADAL,
Clerk U. S. District Court of Porto Rico.
By A. AGUAYO,
Deputy Clerk.

I, the undersigned, substitute Secretary of the Ponce District Court the Secretary of said Court being ill, hereby certify that the foregoing instruments are true and correct copies taken by the official Interpreter of this Court form the original document- which were filed in said District Court of Ponce on the 7th instance by Charles M. Boerman, Defendant's Attorney, in testimony whereof, I set my hand and seal of the said District Court of Ponce, this 15th day of January 1902.

GUSTAVO RODRIGUEZ.

Joint Answer and Plea.

(Filed February 26th, 1902.)

In the United States District Court for Porto Rico.

JUANA DASTAS DE GARROZZI
against
TOMAS GARROZZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

The joint and several answer of Tomas Garrozzi y Pietri, Domingo Piazza y Pietri, and Juana Maria Gonzalez to part and their joint and several plea to the residue of the original bill of complaint of Juana Dastas de Garrozzi.

These defendants saving and reserving to themselves all right of exceptions to the said bill of complaint on account of the many errors therein contained for answer thereto or to so much and such parts thereof as they are advised by counsel it is necessary or im-
20 portant for them to make answer to, answering say:

The derendants admit the allegations contained in para-

graph I of said bill, but defendant Garrozi alleges that the separation took place on account of the complainant's bad conduct.

The defendants admit the allegations of the second paragraph of said bill as far only as that Tomas Garrozi has been possessed of the there enumerated properties and credits but deny that as to the two houses that they were acquired after marriage between Garrozi and complainant and allege that all the enumerated properties and credits were acquired by Garrozi with money that he possessed either in cash before marriage, or in money acquired through sale of properties that have been his own before his marriage to complainant or acquired by realisation of credits due him before marriage to the complainant.

The defendants further answering admit the allegations contained in the paragraph- 3, 4 and 5 of the bill of complaint as far as that the said transfers and sales of properties have taken place but deny any fraud or intent to prejudice the rights of the complainant herein, in the transactions and allege that all the said transactions and sales have been for good and valuable consideration paid and received between the parties to those transactions. The defendants further answering admit the allegation of paragraph 7 that Tomas Garrozi is the attorney in fact and manager for the co-defendants Domingo Piazza and Juana Maria Gonzales, but deny all the other allegations of said paragraph and that Tomas Garrozi bought with the money received from the sale of their property, as alleged, drafts in his own name and that he deposited them or the proceeds thereof in his own name in Paris.

The defendants further answering deny that in any transaction between them there was any fraud or simulation whatever. They deny that the house in Yauco was reconstructed with the money of Tomas Garrozi and also that he in his own name and title had procured or tried to procure an execution against the heirs of Francisco Mejia.

The defendants allege that Tomas Garrozi is receiving a certain salary from them as their respective manager.

21 The defendants admit the allegations of paragraph 8 of the bill of complaint but defendant Tomas Garrozi alleges that it was all on account of bad conduct of the complainant and not by any fault of his.

The defendants admit the allegations of paragraph 9 of the bill of complaint but deny that any indebtedness for alimony to the complainant has occur-ed before the above mentioned (in the bill) transactions and transfers and sales of property between the co-defendants took place.

Defendant Tomas Garrozi and Juana Maria Gonzalez denied that there is any legal relationship between them as brother and sister.

Defendants deny that defendants Domingo Piazza is a poor man or that he came over here subsidized by Tomas Garrozi. He alleges that he always and before coming to Porto Rico was and is now a proprietor in Corsica.

Defendant Tomas Garrozi alleges that when he married the complain-t he was possessed of the two houses above mentioned and of

a certain coffee plantation named Juanita, that he realized by the sales that he made of this plantation all the money that he spent in buying the rest of the properties of which he became possessed during his marriage to the complainant. That the complainant was poor when married to him and did not bring any money or property into the marriage society, that in consequences of bad business he not only did not increase the property during said marriage but actually suffered great losses and is now reduced to the position of having an employ from the co-defendants. That with the quarter part of the money he received from the sale of his properties he had to pay off indebtedness that he incur-ed before either to the co-defendants or to others.

And for their plea to the said bill of complaint the defendants say that the said complainant at the time of the above stated sales and transactions had no claim for alimony or any other claim of indebtedness in her favor against the defendant Garrozi, and that the transaction did not prejudice any creditors of the said Tomas
22 Garrozi.

And for a further plea the defendants allege that the matrimonial community of the said Garrozi and the complainant has not dissolved by law and that she therefore has no claim whatever to any part thereof or any profits in case there should be or have been any.

And these defendants deny all and all manner of unlawful combination and confederacy -herewith they are by said bill charged without this that there is any other matter or cause or thing in said bill contained material and necessary to make answer to and not herein specifically denied avoided traveresed or well and sufficiently answered true to the knowledge or belief of these defendants, all which matters and things the defendants are ready and willing to aver maintain and prove as this Court shall direct, and they pray to be hence dismissed with their costs and charges in this behalf wrongfully sustained.

C. M. BOERMAN,
Solicitor for Defendants.

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrozi; Juana Maria Gonzalez and Do-ingo Piazza y Pietri each of them being sworn for himself says as follows:

I am one of the above named defendants and am acquainted with the contents of the foregoing answer. So much of the answer as concerns my own acts and deeds is true to the best of my knowledge and so much thereof as concerns the acts or deeds of any other person or persons I believe to be true.

TOMAS GARROZI.
DOMINGO PIAZZA.
JUANA MA GONZALEZ.

At her request,

TOMAS GARROZI.

Sworn to before me this 20th day of January A. D. 1902.

A. AGUAYO, *D. C.*

Agreement of Counsel.

(Filed March 15th, 1902.)

District Court of the United States.

D. GARROZI
vs.
T. GARROZI ET AL.

It is admitted by both parties that the petition for removal omitted to state that the defendant was a non-resident of Porto Rico and also it is admitted that the plaintiff appeared and procured a rule permitting him to replead within a given time.

23

F. H. DEXTER,
Solicitor for Complainant.
C. M. BOERMAN,
Solicitor for Defendants.

Motion to Amend Petition for Removal.

(Filed March 15th, 1902.)

U. S. District Court for Porto Rico.

DASTAS DE GARROZI
vs.
TOMAS GARROZI ET AL.

The defendant prays that the petition for removal may be amended and offers the following amendment:

After the words "a citizen" and before the words "of France" put the words "and resident"

C. M. BOERMAN,
Attorney for Defendants.

Opinion.

(Filed March 15th, 1902.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZZI, Plaintiff,
vs.
TOMAS GARROZI ET AL., Defendants.

Opinion.

This cause is in this Court by an order of removal made by the Insular District Court. The record in that Court *in that Court* is

here. After the removal the complainant appeared in this Court and procured an order permitting her to re-plead within a given time. This would not, however, cure lack of jurisdiction in this Court, if it existed.

The complainant now moves to remand the case because the petition for removal does not aver that the defendant is a non-resident.

This is a necessary jurisdictional averment for removal. The defendant moves to amend his petition for removal by averring his non-residence and to this the complainant objects.

It is a rule in such a case that a mere defective averment may be made sufficient by amendment in this Court. But if there be a want of material and jurisdictional averment, it can not be sup-
24 plied by an amendment. An amendment cannot be allowed showing the cause might have been removed. In such a case the jurisdiction does not pass or attach to this Court, although the State or Insular Court may in fact order the transfer.

121 U. S., 427, Carson *vs.* Dunham
131 U. S., 242, Crehore *vs.* R. R. Co.

In this case, however, the petition for removal avers that the defendant is a citizen of France. In other words, an alien. Non-residence once shown is presumed to continue. The averment of French citizenship implies that the defendant, at least at one time , resided there. A resident of the United States is presumed to be citizen of the United States, and a citizen of France should be presumed to be a resident of that country. The proposed amendment is not, therefore, to supply a necessary averment, but to perfect one defectively made. At least it should be considered by legal implication or intentment, from the fact stated, as defectively made.

An order will therefore be entered overruling the motion to remand and allowing the amendment to be filed.

W. H. HOLT, *Judge.*

Order Overruling Motion to Remand and Allowing Amendment to the Petition of Removal.

(March 15th, 1902.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZZI, Plaintiff,
vs.
TOMAS GARROZZI ET AL., Defendants.

Order.

A stipulation is filed herein and the parties have been heard

The Court now files an opinion herein, and the motion to remand this cause is now overruled, and the amendment to the petition for removal is allowed, and is ordered to be filed.

WM. H. HOLT, *Judge.*

Stipulation as to Time to Plead.

(Filed March 17th, 1902.)

In the District Court of the United States for Porto Rico Sitting at Ponce, in Equity.

JUANA DASTAS DE GARROZI
vs.
TOMAS GARROZI ET AL.

Stipulation as to Time to Plead.

It is agreed between the parties hereto that complainant shall have until the April Rule day within which to file her bill of complaint herein and to replead, and it is understood that this cause will be docketed on the Equity side of this Court.

C. M. BOERMAN,
Solicitor for Defendants.
F. H. DEXTER,
Solicitor for Complainant.

Additional Record From the District Court of Ponce, P. R.

(Filed April 29th, 1902.)

District Court of Ponce April 22, 1902.

To the Hon. Presiding Judge of the U. S. Dist. Court for Porto Rico.

SIR: I have the honor to forward to you herewith copies of the writings and bond presented by Att'y Boerman in the proceedings instituted by Doña Juana Dastas against Don Tomas Garrozi, Da Juana Maria Gonzalez and Domingo Piazza y Pietri, about nullity of contracts in as much as this Court has decided to send them to your Court, because it has inhibited itself from taking any cognizance of said suit in favor of the Court precided over by your Honor.

Respectfully,

ISADORE SOTO NUSSA,
Presiding Judge.

[Seal of the Ponce District Court.]

In the Ponce District Court.

JUANA DASTAS DE GARROZI
against
TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALEZ.

The petition of Juana Maria Gonzalez one of the defendants in the above entitled action respectfully says:

That said action is a suit of a civil nature of which the
26 United States District Court for Porto Rico as original jurisdiction, to wit; for the annulment of deeds for an amount over thousand dollars besides interest and costs and has been brought in this Court and has not yet been tried, nor has the time for the defendants to appear demur plead or answer expired. That said suit contains controversys which are wholly between the Complainant a citizen of France and your petitioner who is a citizen of Porto Rico and which can be fully determine- between them as your petitioner is informed and believes that the citizenship of the parties is now as has been at the commencement of this suit as has been stated. That by reason of the premises your petitioner is desirous and entitled to have said suit removed to the United States District Court for Porto Rico. That your petitioner has not yet filed any defence in this Court, nor has she applied for any inhibitory proceeding. Your petitioner therefore presenting the bond required in such cases prays that this Court make an order of removal of this case to the said United States District Court for Porto Rico and direct a transcript of the record as well as of this petition to be transmitted to this Court.

C. M. BOERMAN,
Solicitor for Defendant.

U. S. OF AMERICA, *District of Porto Rico, ss:*

Juana Maria Gonzalez on oath says: I am the above named petitioner and have heard and read the petition and know the contents thereof and that it is true to my knowledge except as to matters alleged on information and belief and as to such I believe it to be true.

A RUEGO DE JUANA MARIA GONZALEZ.
TOMAS GARROZI.

Sworn to before me this 12th day of March 1902.
(Sig.) RICARDO NADAL,
Clerk U. S. District Court,
By A. AGUAYO, *D. C.*

[SEAL.]

In the District Court of Ponce.

JUANA DASTAS DE GARROZI
against
27 TOMAS GARROZI Y PIETRI, DOMINGO PIAZZA Y PIETRI, and JUANA MARIA GONZALES.

The petition of Domingo Piazza y Pietri one of the defendants in the above entitled action respectfully shows:

That said action is a suit of a civil nature of which the District Court of the United States for Porto Rico has original jurisdiction to wit, for annulment of deeds of over thousand dollars and has been

brought in this Honorable Court and has not yet been tried, nor has the time for the defendants to appear, plead, demur or answer expired. That said suit is a controversy between the plaintiff, a French citizen and the defendants of whom the petitioner is a citizen of France and a resident of Corsica, France, and has been such at the commencement of the suit as well as now. That by the reason of the premises this petitioner is desirous and entitled to have said suit removed to the said United States District Court for the District of Porto Rico. That your petitioner has not yet filed any defence in this Court, nor has he applied for any inhibitory proceeding. Your petitioner herewith presents the bond provided by Statute in such cases. Wherefore he prays that this Court make an order in the case of removal to the U. S. District Court for Porto Rico and direct a transcript of the record and of this petition to be made to said Court.

C. M. BOERMAN,
Solicitor for Defendant.

U. S. OF AMERICA, *District of Porto Rico, ss:*

Domingo Piazza y Pietri on oath says: I am the above named petitioner. I have heard it read and know the contents thereof and that the same is true in substance and fact.

(Sig.) DOMINGO PIAZZA.

Sworn to before me this 12 day of March, 1902.

(Sig.) A. AGUAYO,
D. C. U. S. District Court. [SEAL.]

JUANA DASTAS DE GARROZI,
against
TOMAS GARROZI Y PIETRI, DOMINGO Y PIETRI, and JUANA MARIA GONZALEZ.

28 Know all men by these presents: That we, Domingo Piazza y Pietri and Juana Maria Gonzalez, as principals and Xavier Mariani and Martin Fernandez residents of Ponce as sureties are held and firmly bound to Juana Dastas de Garrozi, plaintiff above named in the sum of Three Hundred Dollars lawful money of the United States of America, for the payment of which well and truly to be made we and each of us bind ourselves, our heirs administrators and executors jointly and severally by these presents.

The condition of this obligation is such that whereas the said Domingo Piazzi y Pietri and Juana Maria Gonzalez, have applied by petition to the District Court of Ponce for the removal of a certain cause therein pending wherein Juana Dastas de Garrozi de Garrozi is plaintiff and Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez are defendants to the United States District Court for Porto Rico, on the grounds in the petitions set forth.

Now, therefore, if your petitioners shall enter in the said U. S. District Court on or before the 1st day of the first regular session a copy

of the record of said suit and shall pay all costs that may be awarded therein by said U. S. Court if said Court shall hold that said suit was wrongfully removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

(Sig) A RUEGO DE JUANA MARIA GONZALEZ.
TOMAS GARROZI.
MARTIN FERNANDEZ.
EXAVIER MARIANI.
DOMINGO PIETRI.

Signed before me, this 12th day of March 1902.

RICARDO NADAL,
Clerk U. S. District Court.
By A. AGUAYO, *D. C.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Exavier Mariani and Martin Fernandez each of them being sworn says they are worth each of them for himself over six hundred dollars over and above their legal liablities, and that they are house holders.

MARTIN FERNANDEZ.
X. MARIANI.

Sworn to before me this 12th of Mch 1902.

A. AGUAYO,
D. C. U. S. Court.

Reformed Bill of Complaint.

(Filed April 7, 1902.)

In the District Court of the United States for Porto Rico.

29 JUANA DASTAS, a Citizen of the Republic of France, Plaintiff,
vs.
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZZI Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ,
Citizens of the Republic of France, Defendants.

To the Honorable Judge of the District Court of the United States in and for the District of Porto Rico:

Juana Dastas, a citizen of the Republic of France, brings this bill against Tomas Garrozi y Pietri, Juan Maria Gonzalez, Domingo Piaza y Pietri, and Quintin G. Ramirez, citizens of the Republic of France, and residing in the Municipality of Yauco, Porto Rico, and thereupon your orator complains and says that she contracted matrimony in the Municipality of Yauco, Porto Rico, on the twelfth day of May, A. D. 1886, with the said defendant Tomas Garrozi y Pietri, and that the said contract of matrimony was made without any ante-nuptial agreement as to the dower, conjugal or community property that they then had or might accumulate, and that your

orator lived with and sustained the marriage relation with the said defendant Tomas Garrozi y Pietri until the twenty eighth day of November, A. D., 1898, when they separated.

Your orator further represents unto your honor that on the twenty eighth day of November, A. D., 1898, and at the time of the said separation that your orator and the said defendant, Tomas Garrozi y Pietri, were owners and possessed of the following community property, to wit:

(*a.*) Two masonry houses located in Borinquen Street of the Municipality of Yauco, and being recorded in the municipal register under the respective numbers of 40 and 42.

(*b.*) A sugar cane plantation known and designated as "Maria Antonia," located in the barrios of Guanica and Susua Baja, in the municipality of Yauco, the same being improved with houses, with steam engines and the necessary machinery for manufacturing sugar.

(*c.*) A mortgage credit on the coffee plantation known and designated as "Luisa" and located in the barrio of Rancheras, in the Municipality of Yauco, for the sum of twenty thousand pesos, which the said defendant, Tomas Garrozi y Pietri, purchased from Marcial Santoni y Ortiz, the said plantation now being owned by Tomas Olivari Santo and his mother Mrs. Adela.

(*d.*) A mortgage credit on the coffee plantation known and designated as "Leonor" for the sum of twenty-three thousand six hundred and eighty pesos, the same being situated in the barrio of Aguas Blancas in the Municipality of Yauco, now being owned by Francisco Mejiasy Rodriguez.

(*e.*) A mortgage credit for the sum of twelve thousand pesos upon the coffee plantation named "Juanita" in the barrio of Aguas Blancas in the Municipality of Yauco, the said coffee plantation being the property of Mr. Ysidoro Pintado.

(*f.*) A mortgage credit for the sum of ten thousand four hundred and seventy pesos and thirty six centavos upon the coffee plantation named "Mercedes," which is composed of three parts or parcels of lands, two of said parts or parcels of land being located in the barrio of Pasto, Municipality of Guayanilla, and the other part or parcel of land being located in the barrio of Aguas Blancas, Municipality of Yauco, said plantation being the property of Mr. Mercedes Lluvera.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, filed suit against your orator in the honorable District Court of Porto Rico for the District of Ponce, and in which judgment was rendered on the seventeenth day of February, A. D., 1900, denying the divorce and declaring your orator not guilty.

Your orator further represents unto your honor that on the twenty first day of May, A. D., 1900, in the Honorable District Court of Porto Rico for the District of Ponce, that the said defendant, Mr. Tomas Garrozi y Pietri, brought another suit for divorce against your orator, which was decided in your orator's favor, and which is now

pending and undecided on appeal in the Supreme Court of
31 Porto Rico.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by a public notarial deed, on the twenty-sixth day of December, A. D., 1899, and before José R. Nazario de Figueroa, a notary public in San German, Porto Rico, for the simulated and pretended consideration of six thousand pesos, the aforesaid masonry houses in subdivision "a" to the defendant Juana Maria Gonzalez his natural si-ter.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold by public notarial deed on the twenty fifth day of May, A. D., 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended consideration of forty-eight thousand dollars, the said sugar plantation "Maria Antonia," in subdivision "b" with appurtenances thereto to the defendant Juana Maria Gonzalez, his natural sister.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document, on the first and fourth day of August, A. D., 1900, and before Manuel Solis, A notary public in Yauco, Porto Rico, for the simulated and pretended sum of twenty thousand pesos, the aforesaid mortgage on the coffee planta- "Luisa" in sub-division "c" to the defendant Domingo Piaza y Pietri his uncle.

Your orator furtner represents unto your honor that the said defendant, Tomas Garroz: y Pietri, as administrator of the aforesaid community property fraudulently conveyed, transferred, cessioned and assigned by public notarial document and before Manuel Solis,
a notary public in Yauco, Porto Rico, on the second day of
32 August, A. D., 1900, for the simulated and pretended sum of twenty-three thousand six hundred and eighty pesos, the aforesaid mortgage on the coffee plzntation "Leonor" in sub-division "d" to the defendant Domingo Piaza y Pietri his uncle.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document on the first day of August, A. D., 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended sum of twelve thousand pesos, the aforesaid mortgage in the coffee plantation "Juanita" in sub-division "e," to the defendant Domingo Piaza y Pietri His uncle.

Your orator further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned, by public notarial document, and before Rafael Leon y Paz, on the thirty first day of July, A. D., 1900, in Ponce, Porto

Rico, for the simulated and pretended sum of ten thousand four hundred and seventy pesos and thirty six centavos, the aforesaid mortgage on the coffee plantation "Mercedes," in sub-division "f," to the defendant Domingo Piaza y Pietri his uncle.

Your orator further represents unto your Honor that the said defendant, Tomas Garrozi y Pietri, has general power of attorney of the said defendant Juana Maria Gonzalez, his natural sister, and in the name of the said defendant Juana Maria Gonzalez, on the second day of July, A. D., 1900, fraudulently conveyed, transferred and sold by public deed before Angel Acosta, a notary public in Ponce, Porto Rico, the aforesaid sugar plantation "Maria Antonia" for the simulated and pretended sum of forty eight thousand dollars, in subdivision "b" of this bill of complaint to the defendant Quintin G. Ramirez y Ramirez.

Your orator further represents unto your honor that in the divorce proceedings now pending on appeal in the Supreme Court
33 of Porto Rico, the same having been appealed from the honorable District Court of Porto Rico for the District of Ponce, that the said honorable District Court made a judicial decree on the fifteenth day of July, A. D., 1901, granting unto your orator the sum of seventy five dollars per month and payable monthly in the form of alimony pending final adjudication of the said suit, and that the said Court by their further order on the seventh day of August, A. D., 1900, ordered the said defendant Tomas Garrozi y Pietri to pay unto your orator the sum of five hundred and ninety eight pesos judicial expenses which your orator had incurred in defen-ing said suit. And your orator further represents that she has been unable to collect either of said sums or any part thereof by reason of the said fraudulent transfers of the aforesaid properties.

Your orator further represents unto your honor that each and all the aforesaid sales, transfers, and assignments were fraudulent and void and at the time of making the aforesaid deeds, cessions and assignment of all the aforesaid properties and mortgages that the defendant Tomas Garrozi y Pietri and each and all of the said grantees and cessionees thereof well knew that one-half of the aforesaid properties and mortgages were community property and one-half belonged to your orator and that they were so then and there conveyed in fraud of your orator, and that the said defendant Tomas Garrozi y Pietri had no means apart from the aforesaid property and mortgages to settle with your orator for her interest in the aforesaid properties and mortgages and to pay your orator her stipulated monthly allowance in form of alimony of seventy five dollars per month, and the sum of five hundred and ninety eight pesos as allowed and decreed to your orator for the judicial expenses by the District Court of Ponce; that the afore- sales, transfers, cessions and assignment by notarial documents were fraudulent-made, not *bona fide,* and for a mere simulated and pretended consideration, and were made for the express purpose of depriving your
34 orator of her rightful and legal interest in the aforesaid properties and mortgages, and to avoid paying the aforesaid

monthly allowance and court expenses as adjudged and decreed by the honorable District Court for the District of Ponce to your orator.

To the end therefore that your orator may have that relief which she can only obtain in a Court of Equity, and that the said defendants and each of them may answer the premises, but not upon oath or affirmation, the benefit of which is expressly waived by your orator, and she now prays the honorable court that the said sales, transfers, cessions and assignment of the aforesaid properties and mortgages be set aside, annul-ed and held for naught and that the defendants be required to surrender up the same to be cancelled, and that they and each of them be for ever restrained and enjoined from setting up or claiming any estate, right, title interest in or to the said properties and mortgages, and that your orator may be decreed to be owner of ½ the aforesaid properties and mortgages and have such further or other relief as the nature of the circumstances of the case may require.

May it please your honor to grant unto your orator the right of subpœna to be directed to said Quintin G. Ramirez y Ramirez, who heretofore has not been served, thereby commanding him at a certain time and under a certain penalty therein to be limited, personally to appear before this honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such order, direction and decree as may be made against him in the premises as shall seem meet and agreeable to equity, and your orator will ever pray.

FRANCIS H. DEXTER,
HORTON AND CORNWELL,
Solicitors for Complainant.

Writ of Subpœna.

(Issued April 30th, 1902.)

In the District Court of the United States for Porto Rico. In Chancery.

35 JUANA DASTAS
vs.
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI and QUINTIN G. RAMIREZ.

Subpœna.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

The President of the United States of America to Quintin G. Ramirez y Ramirez, Greeting:

You are hereby commanded that you be and appear in the said District Court of the United States for Porto Rico, aforesaid at the court room of said court in the city of Ponce on the first Monday in

June 1902, the same being the 2nd day of that month then and there to answer a certain bill in Chancery exhibited against you in said Court by Juana Dartas and to have and receive what the said Court shall have considered in tha- behalf, and this you are not to omit under penalty of five thousand doliars (5,000.00).

Witness, the Honorable Wm. H. Holt, Judge of the District Court of the United States for Porto Rico, This 30th day of April A. D., 1902 and in the 126th year of the Independence of the United States of America.

Attest:

RICARDO NADAL, *Clerk,*
By A. AGUAYO, *Deputy.*

Memorandum.

You are hereby commanded to enter your appearance in the above entitled suit on or before the first Monday in June next, the same being the 2nd day of June 1902, at the Clerk's office of said Court, pursuant to said bill; otherwise the said bill may be taken *pro confesso.*

Marshal's Return.

(Filed May 12th, 1902.)

United States Marshal's Office, District of Porto Rico.

I hereby certify and return, that I received the within writ
36 on the 9th day of May, 1902, and personally served the same on the 10th day of May, 1902, on Quintin G. Ramirez y Ramirez by delivering to and leaving with Alfredo Ramirez an adult person, who is a member or resident in the family of Quintin G. Ramirez y Ramirez said defendant named therein at San German, P. R. in said District an attested copy thereof, at the dwelling house or usual place of abode of said Quintin G. Ramirez y Ramirez one of said defendants herein.

E. S. WILSON, *U. S. Marshal,*
By WILHEM LUTZ, *Deputy.*

Mayaguez, P. R. May 10th, 1902.

Demurrer to Bill.

(Filed April 30th, 1902.)

In the United States District Court for Porto Rico. In Chancery.

JUAN DASTAS GARROSSI
vs.
TOMAS GARROSSI ET AL.

The joint demurrer of the defendants to the repleaded original bill of complaint of the complainant.

These defendants by protestation not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are therein set forth and alleged, demur thereto and for cause of demurrer show: That the said plaintiff who appears by her said bil- to be a *feme couvert* has exhibited her said bill without any person being named therein as her next friend.

Wherefore they demur thereto and pray judgment whether they shall be compelled to make any further answer to said bill and pray to be hence dismissed.

C. M. BOERMAN,
Defendants' Solicitor.

U. S. OF AMERICA,
District of Porto Rico, ss:

Tomas Garrossi, Juana Maria Gonzalez and Domingo Piazza on oath say that the said demurrer is not interposed for delay and that the same is true in point of fact.

DOMINGO PIAZZA,
TOMAS GARROSSI,
Por JUANA MARIA GONZALEZ.
A su Ruego TOMAS GARROSSI.

Sworn to before me this 30th day of April, 1902

A. AGUAYO,
Deputy Clerk.

37 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

C. M. BOERMAN,
Defendants' Solicitor.

Joint Answer and Plea.

(Filed May 12th, 1902.)

In the United States District Court of Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROSSI ET AL.

The joint and several answer of Tomas Garrossi y Pietri, Domingo Piazza y Pietri and Juana Maria Gonzalez to part and the joint and several plea of the same defendants to the residue of the original repleaded bill of complaint of Juana Dastas de Garrossi, complainant.

These defendants saving and reserving to themselves all right of exceptions and pleas to the said bill of complaint on account of the many errors therein contained, for answer thereto or to *to* so much thereof as they are advised by counsel it is necessary or important for them to make answer to answering say: They admit the allegation of the marriage of the complainant to the defendant Tomas Garrossi and the allegation that they separated, but deny that the separation was the consequence of any fault on the side of said Tomas Garrossi.

They admit that there are now pending proceedings for divorce against the complainant by said Tomas Garrossi, in the Supreme Court of Porto Rico and that the complainant and defendant Garrossi are legally still man and wife with all their conjugal rights. They deny that the complainant was at any time possessed of any of the property enumerated in the bill of complaint and allege that all the property therein enumerated and specified was the sole property of the defendant Tomas Garrossi possessed and owned by him alone as his own separated property, owned by him: one part of said property before his marriage to the complainant and the other part
38 bought with money possessed by him before his marriage or with money realized by the sale of real and personal property owned by him before his marriage to the complainant. They further allege that the complainant did not bring in any marriage portion and did not possess in her own right any property or contribute any to the marriage society. They further allege, defendant Garrossi on his own knowledge and the other defendants on information and belief, that there were no gains or profits which belonged to the marriag couple or marriage society as social or common gains at any time and specially at the time of the sales of property alleged in the bill of complaint, which would have entitled the complainant to a participation in the ownership of any part of said property.

The defendants admit that the transfers of the property enumerated and specified in the bill of complaint took place, but deny any part ownership in said properties by the complainant and further deny any fraud, simulation or intent to prejudice any rights of the com-

plainant or any body else's rights connected with said transfers or sales, and allege that all the said sales and transfers of properties or property rights have been made in good faith and for good and valuable considerations and that the defendant Garossi had full right to sell and they to purchase any property belonging exclusively to him, and that they have lawfully acquired said properties and respectively lawfully disposed of them without prejudicing any person by those acts.

The defendants deny that prior to the divorce proceedings now pending on appeal in the Supreme Court the defendant Tomás Garossi had instituted any other divorce proceedings against the complaina-t, and also deny that on the 7th day of August 1900 an order to pay to her the Complainant $598.00 has been made, but allege that such order — dated about one year thereafter.

And the said defendants Tomas Garossi and Juana Maria Gonzalez upon their own knowledge and defendant Domingo
39 Piazza upon information and belief deny that there is any legal relationship between defendant Garrossi and Juana Maria Gonzalez, and take exception to said allegation as scandalous.

And the defendants further allege that all the sales and transfers of property referred to in the bill of complaint have occurred long before any liability has been incurred by the defendant Tomas Garrossi on the alleged orders for alimony, suit money or costs, and that all said orders have been made long after the sales referred to have been made for valuable and good consideration and without any intent to defraud.

And the said defendants for their plea to all the relief sought by the said bill say that at the time of the commencement of this suit and until now the complainant and the defendant Tomas Garrossi have been and still are legally man and wife and that during coverture and until the marriage relationship has been dissolved by a decree of a competent Court the complainant has no right to any part of the common gains of the marriage society even should there have been any, which the defendants deny, and that therefore the defendant has no cause of action which would entitle her to any equitable relief in this Court.

All which matters and things the defendants aver to be true and plead in bar to the whole of said bill and they pray to be hence dismissed with their costs.

C. M. BOERMAN,
Solicitor for the Defendants.

U. S. OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrossi Juana Maria Gonzalez and Domingo Piazza each of them being under oath says that all the allegations in the foregoing plea and answer are true to his own knowledge except as to matters stated to be alleged upon information and belief and as to such matters he believes them to be true.

TOMAS GARROSSI,
Por JUANA MARIA GONZALEZ,
A su Ruego TOMAS GARROSSI,
DOMINGO PIAZZA.

Sworn to before me this 30th day of April, 1902.

A. AGUAYO,
Deputy Clerk.

40 (This certificate was filed May 16th as of May 12" 1902.)

(I hereby certify that in my opinion the foregoing plea is well founded in point of law.

C. M. BOERMAN,
Solicitor for the Defendants and of Counsel.)

Answer, Plea, and Demurrer of Quintin Ramirez.

(Filed May 14th, 1902.)

In the United States District Court for Porto Rico. In Chancery.

JUANA DASTAS GARROSS.
against
TOMAS GARROSSI ET AL.

The Separate Demurrer, Plea and Answer of Quintin G. Ramirez y Ramirez to the Repleaded Original Bill of Complaint of the Complainant.

First: The defendant Ramirez demurs to said bill of complaint for that the said plaintiff who appears by her said bill to be a married woman has exhibited her said bill without any person being named therein as her next friend.

Second: The defendant Ramirez not confessing or acknowledging any of the matters or things alleged in the bill to be true in such manner and form as therein set forth, and not waiving his demurrer aforesaid for his plea to said bill says that the complainant being still the legal spouse of the defendant Garrossi has no rights to the property described in the bill or to any gains or profits of the matrimonial community until a divorce has been decreed in her favor and therefore has no right of action against the defendant.

Third: And for his answer to so much of the said bill as he is advised by his counsel it is material or necessary for him to answer, not waiving his aforesaid demurrer and plea, answering says as follows: He denies he was a party to any fraud in any of the transactions, transfers or sales alleged in the complaint. He alleges that the property referred to in the said complaint as the sugar estate Maria Antonia was inherited by him from his deceased father Gustavo Ramirez.

That said estate was mortgaged in the form of a deed of a conditional sale with the right of repurchase, and that at the time of the transaction referred to in the bill of complaint he, said de-
41 fendant Ramirez wishing to free his said property from the said incumbrance has paid to the co-defendant Juana Maria Gonzalez, who at the time was the owner of the said deed of condi-

tional sale above referred to, the money then due to her to wit: the sum of forty eight thousand dollars, a very good and valuable consideration, for which she, the said Juana Maria Gonzalez then reconveyed the said property in absolute ownership and without incumbrance to the said defendant Quintin Ramirez.

That all these transactions were in good faith and for very valuable consideration and without any fraud and simulation whatsoever, all of which your respondent is ready to prove in the manner this Court shall deem fit.

C. M. BOERMAN,
Solicitor for the Defendant.

U. S. OF AMERICA, *District of Porto Rico, ss:*

Quintin Ramirez under oath says that the foregoing is true i- substance and fact.

QUINTIN RAMIREZ.

Sworn to before me this 30th day of April 1902.

A. AGZAYO,
D. C. U. S. Court.

(This certificate was filed May 16 as of May 14" 1902.)

(I hereby certify that the foregoing plea in my opinion is well founded in point of law.

C. M. BOERMAN,
Solicitor for the Defendants and of Counsel.)

Motion for Leave to Amend.

(Filed May 14, 1902.)

District Court of the United States for the District of Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Motion for Leave to Amend.

Now comes Juana Dastas by her attorneys F. H. Dexter and Horton and Cornwell and move to amend bill of complaint of Juana Dastas by inserting where ever necessary "Juana Dastas by her next friend Luis Dastas."

F. H. DEXTER,
HORTON AND CORNWELL,
Att'ys for Complainant.

42 *Amendments to Bill of Complaint.*

(Filed May 14, 1902.)

District Court of the United States for the District of Porto Rico.
In Equity.

JUANA DASTAS, Plaintiff,
vs.
TOMAS GARROZZI ET AL., Defendants.

Now comes Juana Dastas by her Solicitors F. H. Dexter and Horton and Cornwell permission of the Court having been first obtained and amends the bill of complaint as follows:

In line one of the title after the name of Juana Dastas insert "By her next friend Luis Dastas."

In line one of paragraph one of the bill of complaint after the name Juana Dastas insert "By her next friend Luis Dastas."

F. H. DEXTER,
HORTON AND CORNWELL,
Solicitors for Complainant.

Motion to Strike Out Pleas.

(Filed June 13, 1902.)

District Court of the United States in and for the District of Porto Rico.

JUANA DASTAS ET AL.
vs.
TOMAS GARROSI ET AL.

Motion to Strike Out Plea.

Now comes the complainant and moves the Court to strike out pleas of Tomas Garrosi, Domingo Piazzi and Juana Maria Gonzalez for the reason that the same go to the whole of the said bill, is covered by the said answer which goes to the whole of the said bill, and the same is contrary to the rules of pleading.

F. H. DEXTER,
HORTON AND CORNWELL,
Solicitors for Complainant.

Entry.

(January 13, 1903.)

JUANA DASTAS GARROZZI
vs.
TOMAS GARROZZI Y PIETRI ET AL.

Submitted on pleas.

43 *Motion to Strike Out Plea and Demurrer of Quintin G. Ramirez.*

(Filed March 1, 1904.)

In the District Court of the United States in and for the District of Porto Rico.

JUANA DASTAS, Plaintiff,
vs.
TOMAS GARROZI Y PIETRI, Mrs. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ, Defendants.

To the Honorable Judge of the District Court of the United States for the District of Porto Rico:

Now come the plaintiff above named and moves this Court to strike out the separate demurrer and plea of Quintin G. Ramirez to the bill of complaint because the same are not founded upon a certificate of counsel that in his opinion they are well founded in point of law and because the demurrer is not supported by the affidavit of the defendant that it is not interposed for delay.

F. H. DEXTER,
Solicitor for Plaintiff.

Motion to Strike Out Plea of Domingo Piaza, Garrozi and J. M. Gonzalez.

(Filed March 1, 1904.)

In the District Court of the United States in and for the District of Porto Rico. In Equity.

Motion to strike out the joint and several plea of Tomas Garrozi y Pietri, Domingo Piaza y Pietri, and Juana Maria Gonzalez, to part of the bill of complaint.

JUANA DASTAS, Plaintiff,

vs.

TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN G. RAMIREZ Y RAMIREZ, Defendants.

To the Honorable Judge of the District Court of the United States for the District of Porto Rico:

44 Now comes the plaintiff above named and moves this Court to strike out the joint and several plea of Tomas Garrozi y Pietri, Domingo Piaza y Pietri and Juana Maria Gonzalez, to part of the bill of complaint, because the same is not based upon a certificate of counsel that in his opinion it is well founded in point of law, and further because it is not supported by the affidavit of the defendants herein mentioned that it is not interposed for delay.

F. H. DEXTER,
Solicitor for Plaintiff.

Motion for Leave to Amend Bill of Complaint.

(Filed March 1, 1904.) (March 1st, 1904.)

In the District Couft of the United States in and for the District *District* of Porto Rico. In Equity.

JUANA DASTAS, Plaintiff,

vs.

TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, DOMINGO PIAZA Y PIETRI, and QUINTIN RAMIREZ Y RAMIREZ, Defendants.

Motion for Leave to Amend Reformed Bill of Complaint.

To the Honorable Judge of the above Court:

Now comes the plaintiff above named and moves this Court for leave to amend her reformed bill of complaint as follows:

By inserting on the last page after the words "for the District of Ponce to your orator" and immediately preceding the prayer the fol-

lowing paragraph: That since the filing of her reformed bill of complaint and in the month of June, 1902 the Supreme Court of Porto Rico has granted an absolute divorce from the bonds of matrimony existing between Juana Dastas and Tomas Garrozi.

By adding and inserting in the prayer and after the Words "of properties and mortgages and" the following: That an account be taken of all the foregoing properties and assets and all other property in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof which correspond to your orator, and upon the filing of this report this Court shall decree a partition and division thereof in the proportion of one half to your orator and shall declare by its decree the right of your orator as aforesaid in and to the same.

F. H. DEXTER,
Solicitor for Plaintiff.

General Replication to the Separate Answer of Quintin G. Ramirez y Ramirez.

(Tendered March 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
versus
TOMAS GARROZI ET AL.

This replicant, Quintin G. Ramirez y Ramirez, saving and reserving to himself all and all manner of advantages, of exceptions which may be had and taken to the manyfold errors, uncertainties and insufficiencies of the joint and several answer of the defendants above mentioned, for replication thereunto saith that he doth and will aver, maintain and propve his said bill to be true, certain, and sufficient in the law to be answered into by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied into, and not herein and hereby well and sufficiently replied into, confessed or avoided, traversed or denied, is true; all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by his said bill he hath already prayed.

F. H. DEXTER AND
JOSÉ HERNANDEZ.
Solicitors for Complainant.

General Replication to the Joint and Several Answer of Tomas Garrozi y Pietri, Domingo Piaza y Pietri and Juana Maria Gonzalez.

(Tendered March 2, 1904.)

In the District Court of the United States for Porto Rico,
46 Sitting at Ponce. In Equity.

JUANA DASTAS
versus
TOMAS GARROSI ET AL.

This replicant, Juana Dastas, saving and reserving to herself all and all manner of advantages, of exceptions which may be had and taken to the manyfold errors, uncertainties and insufficiencies of the joint and several answer of the defendants above mentioned, for replication thereunto saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in the law to be answer- *into* by the said defendants, and that the answer of the said defendants is very uncertain, evasive an insufficient in law to be replied *into* by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied *into*, and not herein hereby well and sufficiently replied *into*, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by her said bill she hath already prayed.

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicitors for Complainant.

Order Postponing Hearing of Motions to Strike Out Pleas, etc.

(March 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS GARROZI
vs.
TOMAS GARROZI ET AL.

Order.

Now comes the complainant herein, Juana Dastas and filed her notice of motion to strike out the plea of Quintin G. Ramirez and the joint plea of Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez for lack of certificates and improper verification; also for leave to amend the bill and the prayer thereof. To all of which said de-

fendants by their solicitor C. M. Boerman, Esq. objects, and upon his motion time for the hearing of said motion is postponed until Ma-ch 15, 1904, at 10 o'clock A. M.

47 *Stipulation.*

(Filed March 15, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

It is agreed between the complainant and all the defendants herein, the complainant being represented by F. H. Dexter and José Hernandez and the defendants by C. M. Boerman, as follows:

The answers now on file by the defendants herein, respectively shall stand as answers to the amended bill of complaint.

Complainant within two days shall file her general replication to said answers verification of which is waived.

The said case, then being at issue, shall be referred to an examiner to be appointed by the Court to take all the testimony of the parties herein, which said examiner shall make his report not later than the ninth day of May, without prejudice to the taking of the testimony of witnesses abroad, in accordance with law and by order of the Court.

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicitors for Complainant.
C. M. BOERMAN,
Solicitor for Defendants.

Opinion.

(March 16th, 1904.)

The United States District Court for Porto Rico.

MARCH 16, 1904.

JUANA DASTAS GARROZI, Complainant,
vs.
TOMAS GARROSI ET AL., Defendants.

Opinion.

This action was begun by Juana Dastas Garrosi, as the wife of Tomas Garrosi, against him in the Insular District Court, in October, 1901, seeking to recover her interest in the conjugal property. They had not then divorced. It also sought to annul certain conveyances

of real estate and mortgage credits, which were claimed to be community property, that had been made by the husband to Juana Maria Gonzalez and Domingo Piazza, and they were also made de-
48 fendants. By proper proceedings the action was transferred to this Court and the complainant having elected to prosecute it in Equity, a reformed bill was filed, making Quintin G. Ramirez, who had purchased one of the credits, a defendant.

The defendants demurred to the bill upon the ground that the complainant was a feme covert and therefore without right to sue. A married woman must sue by her next fried. Equity rule 87 provides for her doing so; and if she does not, a demurrer will lie. This was confessed by the complainant thereupon filing an amended bill, suing in the name of her next friend, Luis Dastas, and therefore the demurrer need not be further considered.

The defendants Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez filed and answer uniting in it a plea also,

The defendant Ramirez filed a separate answer, a plea being also embraced in it. The cause was submitted by the defendants upon the pleas and also upon the motion of the complainant to strike same. The ground for both pleas is the same, to wit: that the parties not having been divorced, the wife could not maintain a suit as to the community property; that so long as the matrimonial community existed she could not sue as to the conjugal property. This is matter in abatement

The motion to strike the pleas was upon the ground that there was no certificate by the Solicitor that in his opinion they were well founded in law. This was supplied however as to each Plea.

Also that the verification by the defendants was insufficient in failing to state that the plea was not interposed for mere delay; also that the plea of Tomas Garrozi, Domingo Piazza and Juana Maria Gonzalez, as well as their answer, went to the entire bill. The latter is true, and is not allowable.

It is true that a wife cannot sue for her part of the conjugal earnings and profits until after a dissolution of the marriage, but by Article 1392 of the local Civil Code, the estate arising during marriage belongs upon its dissolution equally to her. Until then the husband is the administrator of it and he may alienate or encumber it in good faith and for a consideration, but the wife can-
49 not do so.

The defendant however, cannot plead to the whole of a bill and at the same time answer all of it. He may plead to a part of it and answer the rest, or he may plead to all of it. A plea to the whole bill is overruled by an answer to all of it. Such an answer waives the plea and it should be disregarded.

12 Fed. Rep. 225. Crescent City *vs.* Butchers, etc. Co.
66 Fed. Rep. 216. Hudson *vs.* Randoslh.
79 Fed. Rep. 865 Huntington *vs.* Laidley etc.

Equity Rule 37 does not authorize a defendant to both plead to and answer the entire bill. It applies where there is a plea to a part

of a bill and an answer as to the residue, which also extends in part to some matter embraced by the plea.

All question as to the pleas is however obviated because the complainant moves to amend the bill by averring that since it was filed a divorce has been granted, and to enlarge the prayer by asking the taking of an account by a Master. The proposed amendment is embraced in the motion and it is right and equitable to permit it to be filed, and it is so ordered. The replications of the complainant to the two answers, which were tendered March 2, 1904 are ordered to be filed, and the cause will proceed.

WM. H. HOLT, *Judge.*

(Thereupon the replications were filed.)

Motion to Appoint Examiner to Take Testimony.

(Filed April 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion to Appoint Harry P. Leake, Esq., Examiner to Take the Testimony in the Above Case.

Now comes the complainant herein, by her attorneys F. H. Dexter and José Hernandez, and represents to this honorable Court that it having been stipulated betwwen the parties herein that this case when at issue should be referred to an examiner to take all
50 testimony of the parties herein, which said examiner shall make his report not later than the ninth day of May, and this case being now at issue, the complainant having filed her several replications to the answers of the defendants herein, and Harry P. Leake being agreeable to all the parties herein to act as such examiner, the complainant now moves this honorable Court to appoint him as such examiner in the above case

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicito-s for Complainant.

Order Appointing Examiner for the Taking of Testimony.

(April 4, 1904.)

The United States District Court for Porto Rico, Sitting at Ponce.

JUANA DASTAS
vs.
TOMAS GARROSI ET AL.

Order Appointing Examiner for the Taking of Testimony.

Now, on this 4th day of April, 1904, in accordance with stipulation of parties, this cause is referred to Mr. H. P. Leake for the taking of testimony herein as Special Examiner. Such testimony shall be taken and submitted not later than the 9th day of May, 1904.

Signed in chambers at San Juan, Porto Rico, April 4, 1904.

WM. H. HOLT, *Judge.*

Amendment to Answer to Amended Bil- of Complaint and Telegram from Complainant's Solicitor Allowing Same to be Filed.

(Filed April 11th, 1904.)

United States District Court for Porto Rico.

JUANA DASTAS GARROSSI
against
TOMAS GARROSSI ET AL.

The defendant amends hereby his answer in answering the amended bill of complaint herein as follows:

By inserting at the end of his answer the following paragraph: "and the defendant Garrossi further answering says that the divorce between him and the complainant was granted to him for the adultery of the complainant and without any fault of his, and
51 that she therefore is not entitled to any share of the property of the matrimonial society even if there should have been any."

C. M. BOERMAN,
Defendant's Solicitor.

Tomas Garrossi under oath says that the foregoing amendment is true in substance and fact.

TOMAS GARROSSI.

Sworn to before me this 11th day of April, 1904.

A. AGUAYO,
Deputy Clerk.

Telegram.

SAN JUAN, 11 *April*, 1904.

C. M. Boerman, Ponce:

You may file amendment to answer but testimony to be taken first week in May.

DEXTER.

Order for a Commission to Take Testimony to Issue.

(April 29th, 1904.)

United States District Court for Porto Rico.

JUANA DASTAS DE GARROSSI
against
TOMAS GARROSSI ET AL.

Upon the affidavit of Tomas Garrossi hereto attached it is her-by ordered in open Court tha- upon the service of the copy of the interrogatories which were submitted herewith upon the complainant or her Solicitors the complainant mat file within five days after such service her cross interrogatories, and the defendant may five days after such filing of the cross interrogatories in the Clerk's office of this Court at Ponce where this suit is pending file his redirect interrogatories, and thereupon all of said interrogatories shall be forwarded with a commission, which the Clerk of this Court shall then issue from this Court, to Simon Damiani United States Consular agent at Bastia Corsica France, that he or his successor in office or substitute therein, after being sworn as provided by the oath annexed to the commission, may take the testimony of Domingo Piazza in the above entitled cause at the earliest practicable date and shall return such testimony subscribed by said witness and duly vrrified with all convinient speed and diligence to this court.

Given under my hand this April 29th, 1904.

WM. H. HOLT, *Judge.*

52 *Order Extending Time for the Taking of Testimony and the Report Thereof by the Commissioner or Examiner Heretofore Appointed.*

(May 3, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Extending Time for the Taking of Testimony and the Report Thereof by the Commissioner or Examiner Heretofore Appointed.

Now on the 2nd day of May, 1904, appeared in open Court complainant, by her Attorneys F. H. Dexter and José Hernandez, for an order extending the time for the taking of testimony and the reporting of the same to this Court by the Commissioner or Examiner heretofore appointed.

It appearing to this Court that due notice have been given of such motion to Solicitor for defendants and no opposition being made thereto and, it appearing to the Court, upon the affidavit of José Hernandez, Filed herein, that it has been impossible to obtain copies of alleged material and important documents which complainant requires to sustain the issues in this cause, and that due diligence has been made to obtain the same; and it appearing that defendants have applied for a commission to take testimony abroad, which commission is still pending, it is therefore

Ordered, that the time for the taking of testimony and filing of report herein by Mr. H. P. Leake, the Commissioner or Special Examiner herein *id* hereby extended to and including May 30th, Nineteen hundred and four.

WM. H. HOLT, *Judge.*

Stipulation Extending Time of Special Examiner to Report to June 30, 1904.

(Filed May 25, 1904.)

U. S. District Court for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZZI.

Hearing Before Special Examiner.

53 *Stipulation.*

It is hereby stipulated and agreed that the Special Examiner H. P. Leake have further time and until the 30th day of June, 1904 in which to file his report of the evidence herein.
May 24, 1904.

JOSÉ HERNANDEZ,
Solicitor for Complainant.
C. M. BOERMAN,
Solicitor for Defendant.

Order Extending Time for the Special Examiner to File Report.

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI.

Order Extending Time to Special Examiner in Which to Report.

It is hereby ordered, taking into consideration the stipulation dated May 24th, 1904, filed herein, that the special examiner, H. P. Leake, have until the thirtieth day of June, 1904, in which to file his report of the testimony in this case.
Given under my hand this May 25, 1904.

WM. H. HOLT, *Judge.*

Commission for the Taking of Testimony Abroad.

(Issued May 31, 1904.)

UNITED STATES OF AMERICA, *District of Porto Rico:*

The President of the United States of America to Simon Damiani, United States Consular Agent, his successor in office or substitute therein, Bastia, Corsica, France, Greeting:

Know ye, That we, in confidence of your prudence and fidelity have appointed you commissioner and by these presents do give you full power and authority, diligently to examine upon his corporal oath or affirmation before you to be taken, Domingo Piazza to give testimony in a certain cause now pending undetermined in the District Court of the United States of America for Porto Rico, wherein Juana Dastas is plaintiff and the said Tomas Garrozi *et al.* are defendants, touching the premises, on the interrogatories
54 hereunto annexed.

And before beginning the said examination of the witness you will take and subscribe to an oath before a notary public or a Judge of a Court that you will faithfully comply with this commission, which oath shall be in the following form: to wit; "I hereby make oath that I shall faithfully comply with the commission issued to me by the District Court of the United States for Porto Rico for the taking of testimony of witness Domingo Piazza in behalf of the defendant in the case of Juana Dastas—*vs.*—Tomas Garrozi *et al.*, and shall return the same, together with the testimony of such witness to the said Court fully and faithfully as given by him."

And you shall also administer to the witness who may testify the following oath: "Do you solemnly swear that you will make true answer to the interrogatories now about to be propounded to you as a witness in the case of Juana Dastas—*vs.*—Tomas Garrozi *et al.*, so help you God.

And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing and have it signed by the witness with a certificate signed by you showing compliance with this commission, and after closing up the same, under your hand and seal if you have one, directed to H. H. Scoville; Clerk of the United States District Court for Porto Rico at San Juan, Porto Rico, and that you return the same when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission into the said District Court before the Judge thereof with all convivient speed.

Witness, the Honorable Wm. H. Holt Judge of the District Court of the United States for Porto Rico, this 31st day of May A. D. 1904 at Ponce, Porto Rico.

Attest:

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico,
By A. AGUAYO,
Deputy Clerk.

Entry.

(August 13, 1904.)

55 Equity. No. 107.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Deposition of Domingo Piazza received and filed.

Entry upon Order Book.

September 26th 1904.

No. 107.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Comes the Special Examiner heretofore appointed to take testimony in this case and files his report of the testimony taken herein.

Motion by Complainant to Suppress the Deposition of Domingo Piazza.

(Filed September 27th, 1904.)

In the United States District Court for the District of Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Complainant's Motion to Suppress the Deposition of Domingo Piazza.

Now comes the complainant herein, by her solicitor- F. H. Dexter and José Hernandez, and moves this Honorable Court to suppress the deposition of Domingo Piaza, a witness examined in this case on the part of the d-fendant before Simon Damiani Examiner on the 13 day of July, 1904, for the following reasons:

1. Because the applicant failed to give ten days' notice to the complainant herein to file her cross-interrogatories, as provided by Equity rule 67.

3. Because no notice was given to complainant of the intended

application for a commission and no opportunity was given her to oppose the same.

4th. Because of the failure of the applicant to serve notice upon complainant of the time and place of taking this deposition.

5. Because of the failure of the applicant to sign the original interrogatories filed herein, contrary to common usage in Equity
56 cases.

6. Because of the insufficiency of the certificate of the Commissioner attached to said deposition, in failing to state the reason of taking the same; the service of notice of any kind upon the adverse party, that said deposition remained in his possession and under his seal until by him directed to this Court: the person by whom it was written, and that the same was done in presence of deponent.

7. Because said deposition was opened out of Court, not in the presence of the parties, and without the consent of the adverse parties.

8. Because it does not appear from the certificate attached to said deposition that deponent knew English, that an interpreter was appointed by order of Court, and that the deposition was translated to him.

San Juan 26 day of Sep. 1904.

F. H. DEXTER.
JOSÉ HERNANDEZ.

Additional Motion to Suppress the Deposition of Domingo Piazza.

(Filed Sept. 29, 1904.)

In the United States District Court for the District of Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Now comes complainant by her solicitors F. H. Dexter and José Herna-dez as supplemental to motion of complainant to suppress said deposition which motion was filed September 26, 1904, and moves this Honorable Court to suppress the deposition of Domingo Piazza for the additional reason that said deposition was not taken within the time prescribed by the rules of Equity for the taking of testimonhy nor within the time prescribed by Orders of this Court.

San Juan, September 28, 1904.

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicitor- for Complainant.

Exceptions to Report of Examiner.

(Filed September 29, 1904.)

In the United States District Court for the District of Porto
57 Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Exceptions by Complainant to the Report of the Examiner.

Now comes complainant by her Solicitors F. H. Dexter and José Hernandez and excepts to the report of the Examiner H. P. Leake in all the testimony of the defendants herein and the witnesses on their behalf examined which was objected to at the time of the taking of the testimony which objections will more fully appear on said report as well as all other objections to any of such testimony.

San Juan Sep. 28, 1904.

F. H. DEXTER AND
JOSÉ HERNANDEZ,
Solicitors for Complainant.

Motion to Strike Out the Testimony of Josefa and Luisa Dastas.

(Filed September 29th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Complainant's Motion to Strike out the Testimony of Josefa and Luisa Dastas Contained in the Report of the Examiner.

Now comes complainant by her solicitors F. H. Dexter and José Hernandez and moves this Honorable Court to strike out the testimony of Josefa and Luisa Dastas referred to in the report of the examiner for the reason that their testimony was taken on Monday, May 2nd. 1904 after complainant'ss motion of April 28 had been presented to the Examiner to postpone the hearing which motion was sustained and after this Court had postponed taking of such testimony.

The testimony of these two witnesses was illegally taken because the hearing had already been postponed and complainant was de-

prived of her right to cross-examined said witnesses and to be present at their examination.

San Juan, September 28, 1904.

F. H. DEXTER,
58 *Solicotors for Complainant.*

Order Sustaining Motion to Suppress Deposition, Etc.

(Oct. 3, 1904.) (October 3, 1904.)

In the District Court of the United States for Porto Rico.

Bill in Equity.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Order.

Now, to wit, on October 3, 1904, this cause having come on for final hearing on law and facts, and also on motion to suppress the deposition of Domingo Piazza, said motion to suppress said deposition is sustained, to which defendants except and the parties agreeing thereto, it is

Ordered hereby that this cause be submitted for final hearing, and the same is referred to a Special Master to report as to law and facts; and in the event the parties are unable to agree on such Special Master, the Court will appoint one by order hereafter.

CHAS. F. McKENNA, *Judge.*

Appointment of Special Master.

(October 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

On this third day of October, 1904, in the Chambers of the Court at San Juan, appear the above entitled Complainant by her Solicitors F. H. Dexter and José Hernandez and Defendants by their Solicitor C. M. Boerman Esq. Defendants by their said Solicitor move for leave of Court to ask for the issuance of a new commission for the taking of the testimony of Domingo Piazza, an absent witness residing in Corsica, for the reason that the testimony of the said Domingo Piazza taken under a previ-us commission has been suppressed, and

upon the hearing of such motion same is denied, to which defendants except. Thereupon by agreement of parties this cause is referred to a Special Master for the purpose of reporting his findings both as to the law and facts upon the whole case and to frame
59 and render a decree to be submitted to the Court herein upon all the issues and for that purpose such Master shall have the right to pass upon the competency, relevancy and materiality of all testimony offered by either party before the examiner and upon the objections already made or which may be made in accordance with law.

By agreement N. B. K. Pettingill is appointed such Special Master and he is required to report his findings not later than November 1, 1904.

F. McKENNA, *Judge.*

Motion to Amend Bill of Complaint in Matter of Form.

(Filed October 18, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce. In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion to Amend Bill of Complaint to Conform to Proof.

Complainant herein prays for an order allowing an amendment to her bill of complaint in the following respects, to wit:

I.

On the second page thereof, to amend the paragraph beginning with the words: "Your orator further represents" on the third line of said bill, and ending with the words: "were owners and possessed of the following community property, to wit" on the seventh line of said bill, by su-stituting for the same the following clause: "Your oratrix represents that on the 9th day of June, 1902, a decree of divorce was entered dissolving the bonds of matrimony between her and defendant Tomas Garrozi, and that upon said date your oratrix was entitled to a one half interest of the following community property (Bienes gananciales) herein after set forth, as well as in all other community property and assets of every kind and description.

II.

On the second page of said bill of complaint, to substitute for the paragraph beginning with "b;" the following paragraph: "(B) A mortgage indebtedness of 80,135.31 pesos represented by a *pacto*

de retro or conditional sale executed by Gustavo and Quintin
60 Ramirez for the sum of 80,135.31 pesos, according to the deed executed May 31, 1899, before the notary Public, Don José R. Nazario de Figueroa; which said mortgage indebtedness was satisfied by the payment to defendant Tomas Garrozi of the sum of 48,000 gold, paid by the said Ramirez, for the use and benefit of Tomas Garrozi and complainant, through defendant Juana Maria Gonzalez, to whom said mortgage indebtedness had been previ-usly transferred by said Garrozzi wrongfully and fraudulently as hereinafter set forth."

III.

On page 2 of said bill of complaint in the paragraph thereof beginning with "(c)," strike out the words in the last two lines of said paragraph, "owned by Tomas Olivari Santo and his mother Mrs. Adela.," and substitute the following: "inscribed in favor of Juana Maria Gonzalez."

IV.

To amend the next to the last paragraph of said bill of Complaint on page two thereof, beginning with the words, "(d). A mortgage credit on the coffee plantation known and designated as "Leoncor," by substituting therefor the following: "(d). A coffee plantation known and designated as "Leonor" upon which a mortgage had been executed in favor of defendant Garrozzi since the date of his marriage with the complainant, for the sum of 23,680 pesos."

"On the second day of August, 1900, defendant Garrozi fraudulently and without consideration and for the purpose of defeating complainant of her right therein, assigned and transferred this mortgage credit to defendant Domingo Piazza for the false and simulated consideration of $8,400, and thereafter, by a decree of the District Court of Ponce in the foreclosure suit instituted by the said Piazza as Trustee for defendant Garrozi, the said mortgage was foreclosed and the property known as "Leonor" was adjudicated absolutely to the defendant Domingo Piazza, but your oratrix avers that this adjudication to the said Piazza was a constructive trust for defendant Garrozzi and your complainant for the interest which they respectively had therein."

61 "Your oratrix further represents that by a fraudulent deed executed August 1, 1902, defendant Piazza fraudulently, without consideration and in collusion with defendant Garrozi and Juana Maria Gonzalez, transferred the said plantation Leonor to the said Juana Maria Gonzalez for the false and simulated consideration of $6,000, but your oratrix avers that the said transfer was made wholly without consideration and for the use and benefit of defendant Garrozi, and that said plantation was and is worth the sum of $25,000."

V.

On page four of said bill of complaint, to insert after the word, "said" where it occurs on the seventh line of said page, and before

the words, "sugar plantation Maria Antonia" where they occur on the said seventh line of said page, the following words: "mort-age indebtedness secured by the said *pacto de retro* or conditional sale upon said."

VI.

To strike out all of the second paragraph on page four of said bill of complaint, beginning with the words, "Your orator further represents" and ending with the words, "coffee plantation "Luisa," Subdivision (c), to defendant Domingo Piazza y Pietri," and substitute the following: "Your oratrix further states that by a decree of the District Court of Ponce, on the 4th day of June, 1900, rendered in the foreclosure suit brought by defendant Garrozzi to foreclose the foregoing mortgage on one undivided half of the said plantation "Luisa," one half of the said plantation was adjudicated to him and your oratrix states that by a decree of the District Court of Ponce of June 19, 1900, rendered in a suit instituted by defendant Garrozi to [illegible]se the foregoing mortgage upon the remaining undivided [illegible]aid property, there was adjudicated to the said Garrozi the [illegible]ng half absolutely of the said plantation "Luisa."

[illegible]d your oratrix further represents that on the first and fourth days of August, 1900, respectively, before Manuel Solis, Notary Public in Youco, Porto Rico, defendant Garrozi as administrator of the aforesaid community property fraudulently and wrongfully conveyed and assigned, without consideration whatsoever to defendant Domingo Piazza the said plantation "Luisa" for the simulated and fictitious sums of $10,000 and $6,000, respectively, and your oratrix states that on the first day of August, 1902, defendant Piazza, by a false fraudulent and fictitious transfer, in collusion with defendant Garrozi and for his benefit and in trust for him, transferred the said coffee plantation "Luisa" to defendant Juana Maria Gonzalez for the fictitious consideration of $10,000, whereas the true value of said plantation was and is the sum of $40,000.

62

VII.

On page four of said bill of complaint, to strike out all of that paragraph beginning with the words, Your orator further represents" and ending with the words, "coffee plantation Leonor," subdivision (d) to defendant Domingo Piazza y Pietri."

VIII.

On page five of said bill of complaint, after the words, "to the defendant Domingo Piazza y Pietri," on the fifth line of said page, add the following: "And your oratrix avers that, in pursuance of the fraudulent design and collusion between defendants Garrozzi, Domingo Piazza and Juana Maria Gonzalez, and without any real consideration whatsoever and for the purpose of tran-ferring this mortgage credit to defendant Juana Maria Gonzalez in trust for the use and benefit of defendant Garrozi, the said defendant Domingo Piazza, on August 1, 1902, by a fraudulent and simulated conveyance, trans-

ferred the same to defendant Juana Maria Gonzalez for the pretended consideration of $4,000 pesos. But said Mortgage credit was and is worth the sum of $12,000.

IX.

On page five of said bill of complaint, add after the words "Mercedes in subdivision (f) to the defendant Domingo Piazza y Pietri," which occur in the 14th and 15th line- thereof, the following: "And your oratrix avers that, in pursuance of the fraudulent design combination and collusion existing between defendants Garrozi, Do-
63 mingo Piazza and Juana Maria Gonzalez, to defraud your oratrix, the said mortgage credit was by a fraudulent and simulated conveyance transferred by defendant Domingo Piazza y Pietri, on the 1st day of August, 1902, to defendant Juan Maria Gonzalez for the pretended consideration of $4,000, but your oratrix avers that in fact there was no consideration for such tran-fer and the same was made from defendant Piazza to defendant Juana Maria Gonzalez for the use and benefit of defendant Garrozi and in fulfillment of the fraudulent design to deprive your oratrix of her interest and rights therein, and said mortgage credit was and is worth $15,000."

X.

On page five of the said Bill of Complaint, to amend all of that paragraph beginning with the words, "Your orator further represents" and ending with the words, "subdivision (b) of this Bill of Complaint to the defendant Quintin G. Ramirez y Ramirez," by substituting the following: "Your oratrix further represents that defendant Tomas Garrozi, in pursuance of said fraudulent design to deprive your oratrix of her rights which she had acquired by law in and to the aforesaid properties and combining and colluding with defendant Juana Maria Gonzalez and acting as her attorney in fact, on the 2nd day of July, 1900, fraudulently executed a deed of resale and cancellation of the said mortgage indebtedness or *pacto de retro* or conditional sale to and in favor of defendant Quintin G. Ramirez y Ramirez for the actual sum of $48,000 gold, which was then and there paid by defendant Quintin G. Ramirez y Ramirez to defendant Garrozi, of which said sum of $48,000 one half belongs to your oratrix."

XI.

By making the name of complainant read Dastas instead of Dartas whereever it occurs in said Bill of Complaint.

Complainant further represents that the foregoing amendments are purely matters of form to adapt the allegations of said
64 Bill of Complaint to the proof which has already been taken herein, and that the same are in furtherance of justice and they are not asked for delay or for any other reason than as above stated.

Complainant prays that, upon the granting of an order allowing such amendments, she may file in the Clerk's office within a short time to be named by the Court or the Judge thereof, a reformed Bill

of Complaint written so as to set forth all of the amendments herein contained, which said reformed Bill of Complaint, containing all the amendments heretofore made in this cause will be filed *nunc pro tunc* as of March 10, 1904, as the amendments now prayed for do not affect the issues or the proofs herein, but conform to the proofs already taken.

San Juan, Porto Rico, October 18, 1904.

F. H. DEXTER,
Solicitor for Complainant.

Order Referring to Special Master Motion of Complainant to Amend Her Bill of Complaint.

(Oct. 24th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Referring to the Special Master the Motion of Complainant to Amend Her Bill of Complaint to Conform to Proof.

Now, on this 24th day of October, 1904, came the parties herein, the complainant by her solicitors F. H. Dexter and José Hernandez and the defendants by their Solicitor C. M. Boerman, Esq.

Both parties agreeing hereto, the Court now orders that the motion filed by complainant for the amendment of her bill be, and it is hereby referred to the Special Master, N. B. K. Pettingill, Esq., who will examine the same and report thereon on Wednesday morning next at 10 o'clock as to whether the amendments proposed by complainant are made as to matters of form or whether such amendments constitute a departure or substantial change of the cause of action of complainant.

Upon the coming in of the Master's report upon this reference the Court will decide what may be due and proper with reference hereto and to the said amendments.

CHAS. F. McKENNA, *Judge.*

Report of Special Master in Chancery on Proposed Amendments to Complainant's Bill.

(Filed Oct. 26th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

To the Judge of the Court aforesaid:

The undersigned, to whom was referred as Special Master in Chancery, by order dated October 24th, 1904, the motion filed in this cause by the complainant on the 18th day of the same month for leave to amend her bill of complaint so as to conform to the proofs taken in said cause, said reference being for the purpose of reporting whether said proposed amendments were simply matters of form, or substancially affected the rights of the parties on the case made by complainant's bill as heretofore amended, begs leave to report as follows:

First.

That the amendments proposed in paragraphs 3, 5, and 11 are merely matters of form and do not affect the merits of the issues as already joined between the parties.

Second.

That the amendments proposed in paragraphs 1, 2, and 10 contain matters affecting the substantial rights of the respective parties in that said amendments enlarge the amount recoverable by
66 the complainant if her theory of the law of the case should be sustained by the Court; but that the same are consistent with and germane to the case of the plaintiff as made upon the issues already joined, and do not constitute a departure therefrom; said changes being devised to make the allegations of the bill conform to the details of the proof as taken before the Examiner.

Third.

That the amendments proposed in paragraphs 4, 6, 8, and 9 contain matters not only affecting the substantial rights of the respective parties but also some matters arising and coming into existence since the filing of complainant's original bill, which matters, in the opinion of the Master are not only not consisting with or germane to the theory of complaina-t's case as originally made but also are not proper subjects for amendment at any time and can only be

brought to the attention of the Court by the filing of a supplemental bill for that purpose.

All of which is respectfully submitted.

N. B. K. PETTINGILL,
Special Master in Chancery.

Exceptions of Complainant to Report of Special Master.

In the District Court of the United States for Porto Rico, Sitting at Ponce.

(Filed Oct. 26, 1904.)

JUAN DASTAS
vs.
TOMAS GARROZI ET AL.

Exceptions of Complainant to Report of Special Master.

Now comes Complainant herein and excepts to the third paragraph of the report of the Special Master, N. B. K. Pettingill, filed this October 26, 1904, under and upon the reference made to him for the purpose of determining the nature of the proposed amendments desired to be made by complainant in her bill of complaint, and for ground of exception, says:

That she excepts to the findings of the said Master that
57 paragraphs four, six, eight and nine of her said motion to amend her bill of complaint contain matters which is the opinion of the said Master, "are not only not consistent with or germane to the theory of complainant's case as originally made, but also are not proper subjects for amendment at any time and can only be brought to the attention of the Court by the filing of a supplemental bill for that purpose."

Plaintiff says that the said amendments are proper to be allowed by the rules and practice in equity, as they simply contain allegations showing that the alleged mortgage credits described in the original bill were before the institution of this suit foreclosed and for the purpose of showing an additional fraudulent transfer from one of the defendants to another defendant herein made after the institution of this suit.

Wherefore, Complainant moves that the finding of the Master as aforesaid be disapproved and that an order be entered allowing the proposed amendments, giving to defendants time within which to plead thereto and upon such terms as will allow them if they desire, as well as the Complaina-t, to take evidence upon the said amendments.

F. H. DEXTER,
Solicitor for Complainant.

Motion for Leave to Withdraw Replication and to Amend.

(Filed October 27, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROSI ET AL.

Motion for Leave to Withdraw Replication.

Now comes complainant herein and respectfully represents to the Court that on the 28th day of October last past she filed her motion to amend her bill of complaint herein, which said motion was by the Court referred to its Special Master the Hon. N. B. K. Pettingill to determine whether the proposed amendments were matter of form or if they were a departure from the case made by
68 the original bill, and the Master having made his report complainant now moves for leave to withdraw her replications filed herein; that her proposed amendments be allowed, and that defendants be allowed a reasonable time to file any new or supplemental answers or other pleadings should they desire to do so to such amendments.

In support to her application to amend her bill as aforesaid Complainant says that the matters and things contained in the said proposed amendments were not known to her until after the evidence was taken in this case before the examiner; that as to the foreclosure of the mortgage credits on the plantation- Leonor and Luisa and the subsequent transfer from defendant Piazza to defendant Juana Maria Gonzalez complainant was not aware and had not been advised prior to the taking of the testimony herein.

Complainant states that since the divorce between her and defendant Garrosi she is and has been in great poverty and distress without the means to pay the fees of the Registrars of Property to obtain the information as to the proceedings in connection with the properties described in her original bill, which said proceedings were made to appear by the exhibits offered in evidence by defendants and now set forth in her said proposed amendments.

Complainant states that she has a meritorious cause of action and that she has been obliged to rely upon the information that she could obtain from friends as to the operations in connection with the properties described in her bill, and that as soon as she — conveniently do so after the arrival of the judge of this Court to Porto Rico she presented her motion to amend.

Complainant further states that such amendments are necessary in the interests of justice in order to conform her case to the proof and by reason of the ruling of the Special Master upon the evidence priviously taken.

F. H. DEXTER,
Solicitor for Complainant.

F. H. Dexter, being duly sworn upon his oath says that he is the solicitor for complainant and that upon his best information and belief the facts set forth above are true; that this affidavit is
69 not made by complainant because she is in the city of Ponce.

F. H. DEXTER.

Subscribed and sworn to before me this 26th day of Oct. 1904.

H. H. SCOVILLE, *Clerk.*

Order Sustaining Motion to Amend Bill, etc.

(Filed Oct. 27, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order.

Now, on this 26th day of October, 1904, the parties hereto appear in open court by their respective Solicitors, Complainant by F. H. Dexter and defendants by C. M. Boerman.

The Special Master, N. B. K. Pettingill, to whom had been referred a motion of complainant to amend her bill of complaint, files his report herein, recommending the allowance of amendments proposed by complainant, Nos. 1, 2, 3, 5, 10 and 11, and recom-ending the disallowance of amendments Nos. 4, 6, 8 and 9; and complainant having filed her exceptions to such report, and having filed her motion to withdraw her replications to the answers already filed by defendants, upon hearing of all of said motions and exceptions and after argument of Counsel, it is hereby ordered that the report of the Special Master be confirmed in so far as it recommend- the allowance of amendments Nos. 1, 2, 3, 5, 10 and 11, and the same is disapproved as to his recommendations concerning proposed amendments of Complainant, Nos. 4, 6, 8 and 9; and the Court thereupon sustained the motion of complainant allowing all of the amendments proposed by such motion filed herein on the 18th day of October, 1904, and Complainant shall, before the November Rule day, file her amended bill containing all amendments allowed thereto to this date.

Complainant herein withdraws her general replications to all of the answers of defendants herein.

Defendants are allowed until the December Rule day, 1904, to file such pleading or pleadings as may be proper under the rules and practice in Equity. Complainant shall have fifteen days there-
70 after to file such pleading, in response to such pleadings as may be filed by defendants, as may be proper under the rules and practice in Equity.

The time within which the Special Master, N. B. K. Pettingill, Esq., was required to report, under the reference heretofore made to him of the entire cause, is hereby extended indefinitely, subject to the further orders of thid Court, and such proceedings shall be had and conducted before the said Special Master as may be right and proper in accordance with the rules and practice in Equity after filing the amendments aforesaid and the subsequent pleadings in response thereto, and after the conclusion of any testimony which may be offered by the parties.

The Master shall at as early a date as possible report his finding to this Court upon the entire cause with suggestions or draft for a final decree.

By consent of parties it is hereby ordered that this cause is dismissed as to defendant Quintin Ramirez.

CHAS. F. MacKENNA, *Judge.*

Amended Bill of Complaint.

(Filed October 29th, 1904.)

In the District Court of the United States for Porto Rico, Sitting at Ponce.

JUANA DASTAS, a Citizen of the Republic of France,
versus
TOMAS GARROZI Y PIETRI, MRS. JUANA MARIA GONZALEZ, and DOMINGO PIAZZA Y PIETRI, Citizens of the Republic of France.

Amended Bill of Complaint.

Juana Dastas, a citizen of the Republic of France, bring- this bill against Tomas Garrozi y Pietri, Juana Maria Gonzalez and Domingo Piazza y Pietri, citizens of the Republic of France, and residing in the Municipality of Yauco, Porto Rico, and thereupon ypur oratrix complains and says that she contracted matrimony in the
71 Municipality of Yauco, Porto Rico, on the twelfth day of May, A. D., 1886, with the said defendant Tomas Garrozi y Pietri, and that the said contract of matrimony was made without any antenuptial agreement as to the dower, conjugal or community property that they then had or might accumulate, and that your oratrix lived with and sustained the marriage relation with the said defendant Tomas Garrozi y Pietri until the 28th day of November, A. D., 1898, when they separated.

Your oratrix represents that, on the 9th day of June, 1902, a decree of divorce was entered dissolving the bonds of matrimony between her and defendant Tomas Garrozi, and that upon said date your oratrix was entitled to a one half interest in the following community property *(bienes gananciales)* hereinafter set forth, as well as in all other community property and assets of every kind and description.

(*a.*) Two masonry houses located in Borinquen Street of the Municipality of Yauco, and being recorded in the municipal register under the respective numbers 40 and 42.

(*b.*) A mortgage indebtedness of 80,135.31 pesos represented by a *pacto de retro* or conditional sale executed by Gustavo and Quintin Ramirez for the sum of 80,135.31 pesos according to the deed executed May 31, 1899, before the Notary Public, Don José R. Nazario de Figueroa; which said mortgage indebtedness was satisfied by the payment to defendant Tomas Garrozi of the sum of $48,000 gold, paid by the said Ramirez, for the use and benefit of Tomas Garrozi and complainant, through defendant Juana Maria Gonzalez, to whom said mortgage indebtedness had been priviously transferred by said Garrozi wrongfully and fraudulently as hereinafter set forth.

(*c.*) A mortgage credit on the coffee plantation known and designated as "Luisa" and located in the barrio of Rancheraas, in the municipality of Yauco, for the sum of twenty thousand pesos, which the said defendant Tomas Garrozi y Pietri purchased from Marcial Santoni y Ortiz, the said plantation now being inscribed in favor of Juana Maria Gonzalez.

(*d.*) A coffee plantation known and designated as "Leo-
72 nor," upon which a mortgage had been executed in favor of defendant Garrozi since the date of his marriage with complaina-t, for the sum of 23,680 pesos.

On the second day of August, 1900, defendant Garrozi fraudulently and without consideration and for the purpose of defeating complaina-t of her rights therein, assigned and transferred this mortgage credit to defendant Domingo Piazza for the sale and simulated consideration of $8,400, and thereafter, by a decree of the District Court of Ponce in the foreclosure suit instituted by the said Piazza as trustee for defendant Garrozi, the said mortgage was foreclosed and the property known as "Leonor" was adjudicated absolutely to the defendant Domingo Piazza, but your oratrix avers that this adjudication to the said Piazza was a constructive trust for defendant Garrozi and your complaina-t for the interests which they respectively had therein.

Your oratrix further represents that by a fraudulent deed executed August 1, 1902, defendant Piazza fraudulently, without consideration and in collusion with defendant Garrozi and Juana Maria Gonzalez, transferred the said plantation "Leonor" to the said Juana Maria Gonzalez for the false and simulated consideration of $6,000, but your oratrix avers that the said transfer was made wholly without consideration and for the use and benefit of defendant Garrozi, and that said plantation was and is worth the sum of $25,000.

(*e.*) A mortgage credit for the sum of twelve thousand pesos upon the coffee plantation named "Juanita," in the Barrio of Aguas Blancas in the Municipality of Yauco, the said coffee plantation being the property of Mr. Isidoro Pintado.

(*f.*) A mortgage credit for the sum of ten thousand four hundred and seventy pesos and thirty six centavos upon the coffee plantation named "Mercedes," which is composed of three parts or parcels of

land, two of the said parts or parcels of land being located
73 in the barrio of Pasto, municipality of Guayanilla, and the other part or parcel of land being located in the barrio of Aguas Blancas, municipality of Yauco, said plantation being the property of Mrs. Mercedes Lluvera.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by a public notarial deed, on the twenty sixth day of December, A. D. 1899, and before José R. Nazario de Figueroa, a notary public in San German, Porto Rico, for the simulated and pretended consideration of six thousand pesos, the aforesaid masonry houses in subdivision "a" to the defendant Juana Maria Gonzalez.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred and sold, by public notarial deed, on the twenty-fifth day of May, A. D. 1900, and before Manuel Solis, a notary public in Yauco, Porto Rico, for the simulated and pretended consideration of forty eight thousand dollars, the said mortgage indebtedness secured by the said *pacto de retro* or conditional sale upon said sugar plantation "Maria Antonia" in subdivision "b," with appurtenances thereto, to the defendant Juana Maria Gonzalez.

Your oratrix further states that by a decree of the District Court of Ponce, on the 4th day of June, 1900, rendered in the foreclosure suit brought by defendant Garrozi to foreclose the foregoing mortgage on one undivided half of the said plantation "Luisa," one half of the said plantation was adjudicated to him, and your oratrix states that by a decree of the District Court of Ponce, of June 19, 1900, rendered in a suit instituted by defendant Garrozi to foreclose the foregoing mortgage upon the remaining undivided half of said property, there was adjudicated to the said Garrozi the
74 remaining half absolutely of the said plantation "Luisa."

And your oratrix further represents that on the first and fourth days of August, 1900, respectively, before Manuel Solis, notary public in Yauco, Porto Rico, defendant Garrozi as administrator of aforesaid community property, fraudulently and wrongfully conveyed and assigned, without any consideration whatsoever to defendant Domingo Piazza the said plantation "Luisa" for the simulated and fictitious sums of $10,000 and $6,000, respectively, and your oratrix states that on the first day of August, 1902, defendant Piazza, by a false, fraudulent and fictitious transfer, in collusion with defendant Garrozi and for his benefit and in trust for him, transferred the said coffee plantation "Luisa" to defendant Juana Maria Gonzalez for the fictitious consideration of $10,000, whereas the true valuation of said plantation was and is the sum of $40,000.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned by public notarial document on the first day of August, A. D. 1900, and before Manuel Solis, a notary public in Yauco,

Porto Rico, for the simulated and pretended sum of twelve thousand pesos, the aforesaid mortgage on the coffee plantation "Juanita," in subdivision "e," to the defendant Domingo Piazza y Pietri.

And your oratrix avers that, in pursuance of the fraudulent design and collusion between defendants Garrozi, Domingo Piazza and Juana Maria Gonzalez, and without any real consideration whatsoever and for the purpose of transferring this mortgage credit to defendant Juana Maria Gonzalez in trust for the use and benefit of defendant Garrozi, the said defendant Domingo Piazza, on August 1, 1902, by a fraudulent and simulated conveyance, transferred the same to defendant Juana Maria Gonzalez for the pretended
75 consideration of 4,000 pesos. But said mortgage credit was and is worth the sum of $12.000.

Your oratrix further represents unto your honor that the said defendant, Tomas Garrozi y Pietri, as administrator of the aforesaid community property, fraudulently conveyed, transferred, cessioned and assigned, by public notarial document, and before Rafael Leon y Paz, on the thirty-first day of July, A. D. 1900, in Ponce, Porto Rico, for the simulated and pretended sum of ten thousand four hundred and seventy pesos and thirty six centavos, the aforesaid mortgage on the coffee plantation "Mercedes," in subdivision "f," to the defendant Domingo Piazza y Pietri.

And your oratrix avers that, in pursuance of the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazza and Juana Maria Gonzalez, to defraud your oratrix, the said mortgage credit was by a fraudulent and simulated conveyance transferred by defendant Domingo Piazza y Pietri, on the 1st day of August, 1902, to defendant Juana Maria Gonzalez for the pretended consideration of $4,000, but your oratrix avers that in fact there was no consideration for such transfer and the same was made from defendant Piazza to defendant Juana Maria Gonzalez for the use and benefit of defendant Garrozi and in fulfillment of the fraudulent design to deprive your oratriz of her interest and rights, therein, and said mortgage credit was and is worth $15,000.

Your oratrix further represents that defendant Tomas Garrozi, in pursuance of said fraudulent design to deprive your oratrix of her rights which she had acquired by law in and to the aforesaid properties and combining and colluding with defendant Juana Maria Gonzalez and acting as her attorney in fact, on the 2nd day of July, 1900, fraudulently executed a deed of resale and cancellation of the said mortgage indebtedness or *pacto de retro* or conditional sale to and in favor of defendant Quintin G. Ramirez y Ramirez for the actual sum of $48,000 gold, which was then and there paid
76 by defendant Quintin G. Ramirez y Ramirez to defendant Garrozi, of which said sum of $48,000 one half belongs to your oratrix.

Your oratrix further represents unto your honor that in the divorce proceedings the said honorable District Court made a judicial decree on the fifteenth day of July, A. D. 1901, granting unto your oratrix the sum of seventy five dollars per month and payable monthly in the *from* of alimony pending final adjudication of the

said suit, and that the said Court by their further order on the seventh day of August, A. D. 1901, ordered the said defendant Tomas Garrozi y Pietri to pay unto your oratrix the sum of five hundred and ninyty eight dollars judicial expenses which your oratrix had incurred in defending said suit. And your oratrix further represents that she has been unable to collect either of said sums or any part thereof by reason of the said fraudulent transfers of the aforesaid properties.

Your oratrix further represents unto your honor that each and all the aforesaid sales, transfers and assignements were fraudulent and void, amd at the time of making the aforesaid deeds, cessions and assignments of all the aforesaid properties and mortgages, that the said defendant Tomas Garrozi y Pietri, and each and all of the said parties and cessionees thereof, well knew that one-half the aforesaid properties and mortgages were community property and one-h*laf* belonged to your oratrix, and that they were so then and there conveyed in fraud of your oratrix, and that said defendant Toams Garrozi y Pietri had no means apart from the aforesaid properties and mortgages to settle with your oratrix for her interest in the aforesaid properties and mortgages and to pay to your oratrix her stipulated monthly allowance in form of alimony of seventy five-dollars per month, and the sum of five hundred and ninety-eight pesos as allowed and decreed to your oratrix for judicial
77 expenses by the District Court of Ponce; that the aforesaid sales, transfers, cessions and assignments by notarial documents were fraudulently made, not *bona fide*, and for a mere simulated and pretended consideration, and were made for the express purpose o[f] depriving your oratrix of her rightful and legal interest in the aforesaid properties and mortgages, and to avoid paying the aforesaid monthly allowance and Court expenses as adjudged and decreed by the Honorable District Court for the District of Ponce to your oratrix

That since the filing of her reformed bill of complaint and in the month of June, 1902, the Supreme Court of Porto Rico has granted and absolute divorce from the bonds of matrimony existing between Juana Dastas and Tomas Garrozi.

To the end therefore that your oratrix may have that relief which she can only obtain in a Court of equity, and that the said defendants and each of them may answer the premises, but not upon oath or affirmation, the benefit of which is expressly waived by your oratrix, and she now prays the Honorable court that the said sales, transfers, cessions and assignment of the aforesaid properties and mortgages be set aside, annulled and held for naught and that the defendants be required to surrender up the same to be cancelled and that they and each of them be for ever restrained and enjoined from setting up or claiming any estate, right title, interest in or to the said properties and mortgages, and that an account be taken of all the foregoing properties and assets and all other property in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof

which correspond to your oratrix, and upon the filing of this report this court shall decree a partition and division thereof in the proportion of one half to your oratrix, and shall declare by its decree the right of your oratrix as aforesaid in and to the same, and that your oratrix may be decreed to be the owner of one half of the aforesaid properties and mortgages, and have such further or other
78 relief as the nature of the case may require.

F. H. DEXTER,
Solicitor for Complainant.

Plea to Amended Bill.

(Filed October 31, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

The joint and several plea of defendants Tomas Garrozi, Jua-a Maria Gonzalez and Domingo Piazza y Pietri, by their Solicitor Chas. M. Boerman, to the amended bill of complaint of Juana Dastas, the above named complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in said complainant's amended bill to be true in such manner and form as the same are therein set forth and alleged, for plea to the whole of said amended bill, say:

That on the 9th day of June, 1902, a decree of divorce was granted to the defendant Tomas Garrozi from and against the complainant Juana Dastas for cause of adultery on her part, by a final decree of the Supreme Court of Porto Rico, and that therefore she has no claim what ever upon any marriage partnership property or any property in the hands of the defendant at the time of the divorce under the law of Porto Rico.

All of which matters and things these defendants do aver to be true, and they plead this as a bar to said complainant's amended bill, and pray the judgment of this Honorable Court whether they should be compelled or ought to be required to make any other or further answer to the said amended bill, and pray to be hence dismissed with their cost and charges in that behalf most wrongfully sustained.

C. M. BOERMAN,
Of Counsel for the Defendants.

I hereby certify that in my opinion the foregoing plea is well founded in law.

C. M. BOERMAN,
Of Counsel for Defendants.

79 *Order Referring Plea to Special Master.*

(Filed October 31, 1904.)

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order.

Now, on this 31st day of Oct. 1904, the defendant Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza y Pietri appear by their solicitor C. M. Boerman and file their joint and several plea to the amended bill of complaint herein. Complainant by her Solicitor, F. H. Dexter, consenting thereto, said plea is now referred by consent also of defendants to the Special Master N. B. K. Pettingill to hear and determine the same and to report thereon at his earliest convenience to the Court.

CHAS. F. McKENNA, *Judge.*

Report of Master on Sufficiency of Plea.

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Report of Master as to Sufficiency of Plea.

The complainants having amended their bill on the 29th day of October, 1904, and dismissed their cause as against the defendant Quintin Ramirez, and the remaining defendants having on the 31st day of October, 1904 filed their plea to the bill as amended, which plea has been set down for hearing by the complainant upon the question of its sufficiency, and such question having been by the Court referred to the undersigned as Master in Chancery for a decision, it is hereby Ordered and Adjudged that said plea is insufficient as a defence to said bill and the same is hereby overruled.

N. B. K. PETTINGILL,
Master in Chancery.

Exception to Report of Master on Plea.

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

80 Now come the defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza and except to the finding and conclusion of law filed herein by N. B. K. Pettingill, Special Master, in his report and do except to the refusal of the Master to find their joint and several plea to the amended bill of complaint of the complainant sufficient in law.

Respectfully submitted,

C. M. BOERMAN,
Solicitor for Defendants.

Motion to Confirm Master's Report Overruling Plea.

(Filed November 2, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion of Complainant to Confirm Report of Master, etc.

Now comes complainant herein and moves for an order confirming the report of the Special Master herein overruling the plea filed by defendants to the amended bill, and for an order overruling the said plea.

Complainant further prays for an order requiring defendants to further plea herein if they desire to do so to the amended bill within five days from this date, and requiring complainant to file her pleading in response thereto within two days thereafter; and that if the parties or either of them should desire to take any testimony in support of opposition to the issues presented by the new allegations of such amended or supplemental pleadings, the same shall be taken before the Special Master N. B. K. Pettingill and concluded not later than December 10th next. And not later than December 25th the said Special Master shall make his report and submit his findings herein.

F. H. DEXTER,
Solicitor for Complainant.

To the above named defendants or C. M. Boerman Esq., their Solicitor:

Please take notice that on Thursday November 3rd, 1904 the foregoing motion will be presented to the Court or as soon thereafter as counsel can be heard.

F. H. DEXTER,
Solicitor for Complainant.

Service of copy of above motion served this 2 day of Nov. 1904.
C. M. BOERMAN,
S. for Defe'ts.

81 *Plea.*

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

The joint and several plea of Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, all of the defendants above named to the amended bill of complaint of Juana Dastas, above named complainant.

These defendants respectively, by protestation not confessing or acknowledging all or any of the matters and things in said plaintiff's amended bill to be true in such manner and form as the same are therein set forth and alleged, for a plea to the whole of said amended bill say that, under the Law of Porto Rico, the complaina-t has no right to ask for the delivery to her of any of the property of the conjugal society even if there be any, because the plaintiff has been divorced from the defendant Tomas Garrozi on the statutory ground of adultery on her part and that, under the law of Porto Rico, her husband the said defendant Tomas Garrozi is to remain the administrator of all property belonging to the wife, even of her separate property if there be any. All of which matters and things the defendants do aver to be true and they plead to said plaintif-'s amended bill and pray the judgment of this Honorable Court whether they should be compelled to make any other or further answer to the said amended bill, and pray to be hence dismissed with their cost and charges in that behalf most wrongfully sustained.

C. M. BOERMAN,
Of Counsel for Defendants.

I hereby certify that in my opinion the foregoing plea is well founded in po-it of law.

C. M. BOERMAN,
Of Counsel for Defendants.

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

Tomas Garrozi, being duly sworn, deposes and says that he is one of the above named defendants; that the foregoing plea is true in point of fact and is not interpose- for delay.

TOMAS GARROZI.

Subscribed and sworn to before me this third day of No-
82 vember, 1904.

H. H. SCOVILLE,
Clerk Dist. Court of U. S. for P. R.
By A. M. BACON, *Deputy.*

Answer to Amended Bill.

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

The Joint and Several Answers of Tomas Garrozi, Juana Maria Gonzalez, and Domingo Piazza y Pietri, the D-fendants, to the Amended Bill of Complaint of Juana Dastas, Complainant.

These defendants respectively now and at all times hereinafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, severally answering say:

(1.) That they admit that on or about the 12th day of May, 1886, the complainant herein contracted matrimony with Tomas Garrozi, one of the defendants herein, and that said contract of matrimony was made without any ante nuptial agreement. They further admit that, on or about the 9th day of June, 1902, a decree of divorce was granted to the defendant Tomas Garrozi, dissolving the bonds of matrimony between him and the complainant Juana Dastas, and they allege that such divorce was granted to defendant Tomas Garrozi on the statutory ground of adultery on the part of the complainant, and that therefore, neither upon said date of the divorce or at any time thereafter has complainant been entitled to a one half interest or to any interest in any property belonging to defendant Tomas Garrozi.

(2.) The defendants specifically deny that the complainant has any right, title or interest in the properties described in the amended bill of complaint under letters *a, b, c, d, e* and *f*.

(3.) The defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza on information and belief aver and show to this honorable Court that the complainant herein at the time of entering into the mar-
83 riage relations or contract with the defendant Tomas Garrozi, did not possess and did not bring in any marriage proportion whatever, and that she never, either before marriage or after marriage, acquired any property either by gift, donation, purchase or earnings of any kind and that at the time of the divorce she did not possess any separate property of her own.

(4.) Defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza y Pietri upon information and belief, aver and show to this Honorable Court that there never was any marriage community property in existence upon which the complainant would have any claim whatever, and they aver that at the time of the divorce the property possessed by said Tomas Garrozi was in value less than the property which he brought into the marriage at the time of his marriage and that there was no income or increase whatever which could have formed a part of a community property.

(5.) All the defendants herein deny that the defendant Tomas Garrozi at the time of his divorce possessed or owned the properties described in the amended bill of complaint under letters *a*, *b*, *c*, *e* and *f*. They aver that some of those properties at that time did belong to defendant Juana Maria Gonzalez, who acquired them for a valuable consideration during the years 1899 and 1900, and others of those mentioned at the time of the divorce belong to the defendant Domingo Piazza who acquired them for a valuable consideration from the defendant Domingo Piazza during the said years.

And the defendant herein deny any fraudulent intent, combination or collusion in connection with said sales between the parties codefendants herein or any intent to prejudice the right of the complainant in the premises and all the defendants specifically deny any fraudulent design, combination or collusion in connection with the sale or transfer of the properties described in subdivision (*a*) and (*b*). They also specifically deny any fraudulent design, combination or collusion in connection with the conveyance of the plantation "Luisa," the mortgage credit on the plantation "Juanita" and also specifically deny any fraudulent design, combina-
84 tion or collusion in connection with the transfer of the mortgage credit on the plantation "Mercedes;" also they deny any fraudulent design, combination or collusion in connection with the transfer or sale of the sugar plantation "Maria Antonia;" they also specifically deny any fraudulent design, combination or collusion in connection with the conveyance of any of the properties described in the amended bill of complaint, either between Tomas Garrozi and Juana Maria Gonzalez or between Tomas Garrozi and Domingo Piazza or between Domingo Piazza and Juana Maria Gonzalez. And they aver that all these transactions were in good faith and for a valuable consideration.

(6.) The defendants further show to this honorable Court that all

this sales made by Tomas Garrozi of any property, either to Juana Maria Gonzalez or to Domingo Piazza, were made before any alimony *pendente lite* was granted to the complainant by the District Court of Ponce and before any cost was given to her in the said suit and that therefore there was no credit whatever in her favor at the time of such conveyances which could have bee- prejudiced by such conveyances.

(7.) The defendant Tomas Garrozi upon his own knowledge and the defendants Juana Maria Gonzalez and Domingo Piazza upon information and belief, aver that all the properties sold and conveyed to either Juana Maria Gonzalez or Domingo Piazza by Tomas Garrozi were his own separate and particular properties and that the complainant had no share or interest whatever in said properties at the time of such transfers or sales.

(8.) The defendant Juana Maria Gonzalez further show- to this Honorable Court that in a certain proceeding and claim of right, which she presented in the District Court of Ponce on the property described under letter (*a*) in the amended bill of complaint, the said District Court of Ponce has dictated a judgment recognizing her right to said properties and a final judgment was entered in that Court to that effect on the 19th of January, 1903.

(9.) The defendant Tomas Garrozi further shows to yo-r honor that at the time of the divorce there was nothing whatever of any community property in his hands, to a share in which the complainant could lay claim.

And the defendants deny all and all manner of unlawful combination or confederacy wherewith they are by the said amended bill charged; without this, there is any other matter, cause or thing in said complainant's said amended bill of complaint contained material or necessary for these defendants to make answer to, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable -ourt shall direct; and they humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

C. M. BOERMAN,
Solicitor for Defendants.

Tomas Garrozi and Juana Maria Gonzalez under oath depose and say that they have heard read the foregoing answer to the amended bill of complaint herein and that all the allegations made therein are true to their own knowledge, except as to matters alleged to be upon information and belief, and as to those matters they believe them to be true.

TOMAS GARROZI.
JUANA MARIA GONZALEZ.
Her mark.

Witness:
A. M. BACON.

Subscribed and sworn to before me this 1 day of November, 1904
H. H. SCOVILLE, *Clerk.*

Tomas Garrozi under oath says that he is the attorney in fact of Domingo Piazza defendant herein, that said Domingo Piazza is now absent from this Island and that affiant is well acquainted with all the facts of the case. Affiant makes oath that all the allegations of the foregoing answer refer-ing to Domingo Piazza are true in substance and fact.

TOMAS GARROSI.

Subscribed and sworn to before me this 3rd day of Nov., 1904.
H. H. SCOVILLE, *Clerk.*
By FRANK ANTONSANTI, *D. C.*

86 *Motion to Strike Plea From Files.*

(Filed Nov. 7, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion of Complainant to Strike From the Files the Joint and Several Plea of Defendants Garrozi and Juana Maria Gonzalez Filed November 3rd, 1904.

Complainant respectfully pray for an order of Court striking from the files the joint and several plea of defendants Garrozi and Juana Maria Gonzalez filed November 3rd. 1904, and for grounds thereof show:

First. Defendants' said plea goes to the whole bill and is waived by the answer of defendants already filed by them, which goes to the whole bill.

Second, because the matter set forth in the said plea is and was included in the pleas previously filed by defendants and which have been overruled, by reason of which the said plea is *res judicata.*

Third. Because the said plea was and is properly a matter of defence to the original bill before amendment and the same has been waived by reason of the facts aforesaid, nor is it required or proper by reason of any matters introduced in the said bill of complaint by the amendment thereto—such amendment not affecting the right of complainant to recover by the law of Porto Rico, but only the extent of such recovery and the properties to which such recovery should apply in the event that complainant should be held to have a right to recover anything at all.

Fourth, because the matter of said plea is not in response to any

new matter introduced in the bill of complaint by the said amendment thereto.

Fifth, because the case has been tried and the testimony taken up to this date upon the same theory which defendants now pre-
87 sent by last plea.

F. H. DEXTER,
Solicitor for Complainant.

Motion to Strike from the Files Answer to the Amended Bill.

(Filed Nov. 11, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion to Strike from the Files Answer to the Amended Bill.

Now comes complainant and moves to strike from the files the answer of defendants to the amended bill herein for the reason that the same is improper and contrary to the rules and practice of the Court.

First. Because the amendment to the original bill was only a matter of form and did not effect or change in any respect the issues herein.

Second. Because the said answer does not set up any new fact or facts to meet said amendment.

Third. Because by the answer of defendants heretofore filed herein they have submitted and raised the same question and issues.

Fourth. Because the testimony taken and all proceedings had up to this date in this case have been taken and had upon the same theory as presented in said answer to the amended bill, and therefore no new or additional answer is necessary.

F. H. DEXTER,
Solicitor for Complainant.

Order Referring Certain Pleadings and Matters to Special Master.

(Filed Nov. 10, 1904.)

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Referring Certain Pleadings and Matters to Special Master

Now, on this seventh day of November, 1904, the parties hereto appear in open court in the City of San Juan, complainant by
88 her solicitor F. H. Dexter and defendants by their solicitor C. M. Boerman.

Thereupon, defendants by their said solicitor, call up their exceptions to the report of the Special Master overruling their plea filed herein on the 31st day of October, 1904, to the amended bill of complaint and also submit to the Court a further plea filed by them of the third day of November, 1904, to the said amended bill of complaint.

The Complainant, by her said solicitor, calls up her motion to confirm the said report of the Special Master and also her motion to strike from the files the said further plea of defendants filed on the said third day of November, 1904, and it further appearing to the Court that defendants have filed their answer herein to the amended bill if complaint on the third day of November, 1904;

It is now ordered that all of the foregoing motions, exceptions and pleadings be and they are hereby referred to the Special Master to take such action thereupon as may be proper in accordance with equity and the practice thereof, and to proceed as diligently as possible to speed said cause and to bring the same on a final decree.

Until a final decree is entered and reported herein by the said Special Master, all motions which may be filed in this cause shall be by the Clerk immediately referred to the said Special Master, excepti*on* such motions as by law or the rules of equity pray for orders which require to be made by the Court or the Judge thereof and excepting such motions as the Court or the Judge thereof may hereafter see fit to consider and determine.

CHAS. F. McKENNA, *Judge.*

O. K. (Signed) C. M. BOERMAN.
Approved. " F. H. DEXTER.

Order of Master upon Motions and Exceptions.

(Filed & Entered Nov. 14, 1904.)

In the United States District Court for Porto Rico.

89 In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

(Filed Nov. 14, 1904.)

This cause coming on for further hearing before the undersigned as Special Master in Chancery therein, under an order of the Court dated the 7th day of November, 1904, the undersigned, having heretofore as such Master reported upon the sufficiency of the plea filed by defendants herein on the 31st day of October last, does not feel himself empowered to dispose of the motion made by complainant to confirm the Master's report upon the plea aforesaid, or of the defend-

ant's exceptions to his said report, but hereby recom-ends to the court that said exceptions be overruled and the motion of complainant to confirm be sustained.

Said cause further coming on for hearing, under the order aforesaid upon the motion of complainant to strike from the files the plea filed herein on the 3rd day of November, 1904, defendants ask leave to withdraw said plea as a plea and that the same be allowed to stand as a part of the answer of defendants, to which asking the complainand agrees; and it — therefore so ordered.

Whereupon, counsel for complainant files a motion that the answer of defendants filed herein on the 3rd day of November, 1904, be striken from the files, and said motion is submitted under the order of reference aforesaid; whereupon after consideration it is ordered and adjudged that said motion be denied.

San Juan, Nov. 14, 1904.

N. B. K. PETTINGILL,
Special Master in Chancery.

Order Allowing Filing of General Replication etc.

(Filed Dec. 12, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

(Filed Dec. 12, 1904.)

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order.

90 Now, on this twelfth day of December, 1904, it appearing to the Judge of this Court that Complainant has not filed exceptions to the report of the Special Master overruling her motion to strike from the files the joint and several answer of defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza filed herein on the 14th day of November, 1904, and that the said complainant does not desire to file exceptions thereto within the thirty days allowed by the Equity Rules, but desires to file her general replication to such answer, it is now ordered that such general replication be filed, and the same is now filed, there being no objection ther-to.

Defendants having called up and submitted to the Court their exceptions to the Report of the Master overruling their plea, the said exceptions are by the Court overruled, without prejudice to renewing said exceptions upon final hearing if Defendants should desire to do so.

Complainant's motion to confirm the said Report of the Master

overruling the plea of defendants is herewith sustained and said Report is hereby confirmed.

The entire cause is therefore referred to the Special Master who will proceed with as much diligence as possible to submit a final decree herein.

CHAS. F. McKENNA, *Judge.*

Replications to Joint and Several Answer of Tomas Garrozi et al.

(Filed December 12, 1904.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Replications to the Joint and Several Answers of Tomas Garrosi, Juana Maria Gonzalez, and Domingo Piazza.

This replicant, Juana Dastas, saving and reserving to herself all and all manner of advantages of exception which may be had
91 and *and* taken to the many*f*old errors, uncertainties, and insufficiencies of the joint and several answers of defendants Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, for replication thereunto saith that she doth and will aver, maintain and prove her said bill to be true, certain and sufficient in law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things this replicant is ready to aver, maintain and prove as this Honorable court shall direct and humbly prays as in and by her said bill she hath already prayed.

F. H. DEXTER,
Solicitor for Complainant.

Stipulation of Attorneys.

(Filed December 13, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

Stipulation of Attorneys.

It is hereby stipulated by and between the parties and their respective Solicitors:

First. That the depositions of Domingo Piazza heretofore taken on Commission issued by this Court and returned by the examiner to the Court, which have heretofore been striken from the testimony, be admitted as testimony at the hearing of this case, subject to objections of counsel as to materiality, relevancy or competency of the testimony.

Second. That all the testimony which heretofore has been taken before Special Examiner Harry P. Leake in this cause be admitted to be read at the hearing of the case, subject to objections which have been taken by counsel as to relevancy, materiality or compe-
92 tency of testimony of the witnesses.

Third. That no other testimony will be taken by defendants in this case except as to the value at different times of the properties and credits alleged in the last amended bill of complaint to have been transferred from Domingo Piazza to Juana Maria Gonzalez and the testimony of Juana Maria Gonzalez as to the consideration for such transfers, and that such testimony shall be taken by said Special Examiner Harry P. Leake in the city of Ponce upon proper notice to the parties, and concluded before January 8th, 1905.

Fourth. The complainant will not offer any further testimony except in rebuttal of the testimony mentioned in the last preceding paragraph, and the time for such rebuttal testimony is also limited to be taken on or before January 8th, 1905.

Fifth. And that after such testimony is in, the case shall be immediately thereafter submitted to the Special Master for final decree, said Special Master to notify counsel on both sides of the time fixed for argument and briefs.

December twelfth 1904.

F. H. DEXTER,
Solicitor for Complainant.
C. M. BOERMAN,
Solicitor for Defendants.

Finding of Fact and Law by Special Master.

(Filed April 8, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Report of the Special Master.

To the Honorable Charles F. McKenna, Judge of said Court:

The undersigned having been appointed by Your Honor by order dated 3rd of October 1904, Special Master in this cause, to rule upon the objections taken to testimony and other matters in controversy during the taking of said testimony before H. P. Leake Esq. as special examiner under appointment by this court, and also to report to the court findings of fact and conclusions of law upon
93 said testimony, and certain additional testimony taken after said appointment before the same special examiner and filed in this court on the 30th day of January 1905, having been also referred to me for consideration as such master, I beg leave to submit the following report.

Counsel for the respective parties have appeared before me at various hearings numbering twelve or fifteen in all, all the objections taken to the testimony have been duly ruled upon, all other matters additionally referred to me or properly coming before me have been considered; elaborated argument and briefs have also been submitted by counsel on both sides, and as thorough an examination as possible of the authorities submitted has been made. The testimony is very voluminous, and the theories advanced and insisted upon by counsel on the opposite sides have been so antagonistic that it has been difficult to extract from the evidence precise information on all points; but after the best consideration I have been able to give, I have found the following as the pertinent fact developed by the evidence:

1.

The complainant and defendant were married on the 12th day of May, 1886, without any express marriage contract or other circumstances which varied in any respect the application of the legal principles governing community property.

2.

The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Supreme Court of Porto Rico on the 9th day of June, 1902.

3.

The complainant was about fifteen years old at the time of her

marriage; had been a servant in the house of her husband, and brought no property whatever to the marital patnership.

4.

The defendant was about forty six years old at the time of said marriage, and at that time was the owner of various prop-
94 erties, briefly described as follows:

(A.)

A coffee estate of nearly four hundred acres, known as the "Juanita," but subject to a contract of sale of the one half interest to one Pintado.

(B.)

A mortgage given by Francisco Lluveras for the principal sum of 9,000 "pesos commerciales" which was, at that time, practically equivalent to gold.

(C.)

A mortgage from Simon Fracicelli for the principal sum of 3269.79 pesos (Mexican).

(D.)

A mortgage given by the brothers Antongiorgi for the sum of $18,000.00 gold.

(E.)

Two houses in Yauco, valued at $2500.

5.

The defendant Garrozi, in his testimony claimed to have had $80,000 cash in gold just previous to his marriage, but there is no other credible testimony to substantiate this claim, and all the surrounding circumstances are against the probability of his possession of any such sum. According to Garrozi's own account, when he made the contract with Pintado touching The hacienda "Juanita" in 1881, he brought down from the estate when he came to live in Yauco about $40,000.00 and before that time he had only loaned out two small sums amounting to $3,000.00, and no other source of income is shown except what he may have received under his contract with Pintado, the amount of which is left entirely indefinite. The evidence further shows that the interest on the Lluveras mortgage was only partially paid, and the Antongiorgi mortgage was not purchased until a short time before his marriage. Considering this testimony in connection with the statement of the defendant Garrozi in his own testimony (see E. R., pages 94 & 109) the Master is forced to discredit Garrozi's statement as to the amount of $80,000
95 and that being discredited there is no evidence from which to find any cash assets at the time of the marriage.

6.

That in March 1887 defendant sold the Fraticelli mortgage for its face value.

7.

That in M*ya* 1887 defendant Garrozi sold the Antongiorgi mortgage for its face value.

8.

That in February 1889 defendant Garrozi loaned on a mortgage on the estate "Leonor" 23,680 pesos current money, which loan was afterwards reduced by payment of 17,300 pesos.

9.

That in the same year 1889 defendant Garrozi purchased the estate "Maria Antonia" from Gustavo Quintin Ramirez for the sum of $48,000.00 gold, with the right in the vendors to repurchase within a specified time at the same price.

10.

That in July 1890 defendant Garrozi loaned on a mortgage to Encarnacion Ramirez an amount which, inclusive of interest to July 1895, equal*l*ed $23,398.76 current money. Neither the documentary nor the oral evidence clearly discloses the actual amo-nt loaned at the time the mortgage was given, but as near as can be ascertained the Master concludes that it was approximat-ly equal to $10,000.00 gold.

11.

That in April 1891 defendant loaned on a mortgage to Mercedes Lluveras the sum of $10,470.36 current money.

12.

That in 1892 defendant Garrozi made a final liquidation with Pintado concerning the half interest in the hacienda "Juanita" which he had bargained to said Pintado in 1881, and acknowledged to have received the full sum of $42,000.00 current money, for which he had sold said half interest to Pintado.

96

13.

That in February 1893 defendant Garrozi sold the remaining half interest in the hacienda "Juanita" for the same amount, $42,000.00 current money, payable in seven instalments of $6,000 each, in April of each of the years 1893 to 1899 inclusive; but the evidence does not disclose at what times any of these instalments were actually paid.

14.

That in 1894 the original loan of 9,000 "pesos comerciales" made to Francisca Lluveras as stated in the finding numbered 4 (B) had, with interest and change in the unit value, grown to $20,774.78 current money, of which the then owner of the land paid to defendant Garrozi the sum of $5011.32 in reduction of the mortgage, and defendant Garrozi sold the remainder of the mortgage credit for the remainder of its face value, to wit: $15,763.46.

15.

That in June 1894 the defendant loaned the sum of $15,000 current money on the undivided one half interest of Tomas Olivari in the hacienda "Luisa," and in July of the same year he loaned the sum of $7,000 current money upon the other one hald interest of Adela Santoni in the same estate "Luisa."

16.

That defendant Garrozi brought suits in the District Court of Ponce for the foreclosure of his two mortgages on the said hacienda "Luisa" as a result of which said property was adjudicated to him by the decrees of the Court dated 4th and 19th of July 1900, and on the 1st day of August 1900 defendant Garrozi transferred his title to said "Luisa" which he had obtained in said foreclosure suites to Domingo Piazza, for a consideration as expressed in deeds of $7,200 for one undivided half and $6,000 for the other undivided half, which amounts the deeds of conveyance recited were left in the possession of said Piazza on account of an indebtedness there-
97 tofore existing from said defendant Garrozi to Piazza. The said Piazza afterwards, in the month of August 1902, transferred the same to defendant Juana Marai Gonzalez, for the expressed consideration of $10,000.

17.

That on the same 1st day of August 1900, the defendant Garrozi transferred to Domingo Piaaza the balance of the mortgage remaining due from Pintado on the estate "Juanita" referred to in finding numbered 13 above, then amounting to $7200 gold for the price of $4800 which the instrument of assignment recited was left in the hands of said Piazza in part payment of indebtedness from the defendant Garrozi; and on the 1st day of August 1902 said Piazza assigned said mortgage credit for a recited consideration of $4000 to the defendant Juana Maria Gonzalez in like manner as the property referred to in the previous finding was transferred.

18.

In December 1899 said defendant Garrozi transferred to defendant Juana Maria Gonzalez for the recited consideration of $6,000 cur-ent money, which was then provincial pesos, the two houses refered to in finding numbered 4 (E).

19.

The mortgage given by Mercedes Lluveras referred to in finding numbered 9 was on July 31st 1900 transferred by defendant Garrozi to said Domingo Piazza for a recited consideration of $6,282.22, which said Garrozi acknowledged to have received from Piazza, and on the same 1st day of August 1902 said Piazza assigned the same to defendant Juana Maria Gonzalez for a recited consideration

20.

On the same day of August 1st 1902 said Piazza transferred to

defendant Juana Marai Gonzalez, for a recited consideration of $10,000.00 acknowledged to have been received, the said hacienda "Luisa" referred to in findings numbered 15 and 16, to-
98 gether with another property consisting of (250) two hundred and fifty cuerdas called the "Hortensia," the two properties thus forming one hacienda of seven hundred and seventy five (775) cuerdas, under the name of "Luisa."

21.

On May 28, 1900, the defendant Garrozi transferred to defendant, Juana Maria Gonzalez, all his right and title to the plantation "Maria Antonia" referred to in finding numbered 9, for the recited consideration of $48,000.00, acknowledged to have been received, and on July 1st, 1901, said defendant Juana Maria Gonzalez, represented by the defendant Garrozi under a general power of attorney executed to him on May 28, 1900, transferred the same to Gustavo and Quintin Ramirez for the recited consideration of $48,081.18, the said transfer being made in pursuance to the right of repurchase, reserved by said Gustavo and Quintin Ramirez in the deed of sale which they made to the defendant Garrozi.

22.

That all the foregoing transfers described in findings numbered 16, 17, 18, 19, and 20 were made by the parties thereto without consideration with knowledge of whatever rights they complainant may be found to have in said properties as community property of the said marital partnership, and for the fraudulent purpose of defrauding said complainant out of whatever share she might have in said properties.

23.

That the $48,081.18 alleged to have been received by the defendant Juana Maria Gonzalez from the transfer of the plantation "Maria Antonia" was in fact received by the defendant Garrozi, who really acted in his own interest while pretending to represent the defendant Juana Maria Gonzalez as her attorney in fact; the interest of the said Juana Maria Gonzalez being at the time entirely fictitious; but that some part of said money was expended or reinvested by the defendant Garrozi in the acquirement of the plantation "Hortensia" and the improvements on the haciendas "Luisa" and "Leo-
99 nor" after their transfer into the name of Juana Maria Gonzalez.

The Master concludes therefore that the balance remaining in the hands of defendant Garrozi unexpended is approximately $15,000.00.

24.

That said defendant Garrozi made several trips to Europe during the continuance of his marital partnership, and spent large sums of money by reason thereof; which were as near as can be determined from his testimony, the following amounts:

In 1889	$10,000.00
In 1890	7,000.00
In 1895	5,000.00
In 1896–98	$25,000.00
Total	$47,000.00

Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness. But said testimony is not substantiated by that of any other credible witness, while if true if could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the Master is forced to the conclusion, either that said defendant has exaggerated the amounts expended, or that such extravagant expenditures were not either necessary or reasonable, and hence not a proper charge against the property of the marital partnership.

It seems that twenty-five thousand dollars would have been a liberal expenditure under the circumstances for a man in defendant Garrozi's condition of life, and the Master therefore concludes that twenty-two thousand dollars of the amount should be charged against the separate property of defendant Garrozi.

100

25.

The defendant Garrozi received in instalments from Pintado between the years 1893 to 1899 the sum of $30,000.00 provincial money, under the contract with Pintado referred to in finding numbered 12, but there is no evidence to show on what particular dates any specific parts of said sums were received.

26.

That the capital brought by defendant Garrozi to the marital partnership is therefore found to be as follows:

1. The hacienda "Juanita" which the Master concludes was then reasonably worth	$40,000.00
2. The mortgage from Francisca Lluveras, value	9,000.00
3. The mortgage from Simon Fraticelli	2,000.00
4. The mortgage from Antongiorgi	18,000.00
5. The two houses and lot in Yauco	2,500.00
Total	$71,000.00

27.

That at the time of the dissolution of the said marital partnership, to wit; on the 9th day of June, 1902, the defendant Garrozi was possessed of the following property:

1. Two houses and a lot in Yauco valued at.....	$8,000.00
2. A mortgage credit from Mercedes Lluveras.....	6,000.00
3. Mortgage credit from Encarnacion Ramirez.....	10,000.00
4. The hacienda "Luisa".....	25,000.00
5. The hacienda "Leonor".....	15,000.00
6. Cash remainder from the sale of "Maria Antonia"..	15,000.00
Total	$77,000.00

From the foregoing findings of fact the Master adduces following conclusions of law:

First. That notwithstanding the divorce of the wife of her adultery, she does not lose her right to share in the *g*inancial property, if there be any.

Civil Code, Secs. 73, 1433, 1435.

Second. That the value of the property of defendant Garrozi at the time of dissolution of the marital partnership being found to be of greater value than the property brought by him to said partnership, said partnership has some *ga*nancial assets to
101 be divided.

Third. That the liquidation of the accounts of the marital partnership must be made as of the date of the dissolution thereof and in making such liquidation there must be set apart from the assets of said partnership at said date of dissolution, the value of the property brought by each spouse to said partnership, after charging to the account of the husband whatever may have been wrongfully and fraudulently expended or disposed of by him as the administrator of the partnership funds.

Civil Code, sections, 1419, 1423.
Sentence of the Supreme Court of Spain Dec. 29, 1873
Jurisprudencia Civil, Vol. 29 p. 55.
Sentence Supreme Court of Spain October 14, 1865.
Sentence Supreme Court of Spain February 21, 1885.
Jurisprudencia Civil, Vol. 57 p. 267.
Sentence of Dec. 15, 1896, Vol. 80 p. 807.

Fourth. That in case at bar the complainant having brought no assets to the marital partnership, and the defendant Garrozi having brought property to the value of $71,500.00, and the total assets of the partnership at the date of its dissolution having been found to be $77,000.00, there would remain as the profits *od* said partnership the sum of $5,500.00 of which the complainant would be entitled to one half, or $2,750.00; but the defendant Garrozi having, as herein found wrongfully deprived the partnership of the sum of $22,000.00 the complainant will also be entitled to recover from the defendant Garrozi one half of this amount, or $11,000.00, making a total of $13,750.00 to which the complainant is entitled.

Fifth. That the conspiracy f*o*med between the defendants for the purpose of transferring the titles of said property held in the name of defendant Garrozi before any liquidation of the *ga*na-cial

profits of said partnership had been made for the purpose of defrauding the complainant of whatever rights she might have in the said property upon the liquidation of the said partnership, gives
102 the complainant a right to bring this suit and thereby to terminate the control of said defendant Garrozi over such interest in said property as complainant may have; notwithstanding the provisions of article of the Civil Code.

Sentence of the Supreme Court of Spain, May 8, 1900.
Jurisprudencia Civ-l, Vol. 89, p. 591.

Sixth. That the conveyances describes in findings of fact numbered from 18 to 22 inclusive, which are thereby found to be fraudulent as against the complainant should be decreed to be null and void, as against complainant's rights; and in case defendant Garrozi does not pay over to the complainant the amount hereby found to be due, to be cancelled upon the registry of property in so far as the same may be necessary to enable the complainant, by the sale of said property, or any part thereof, to obtain satisfaction and payment of her said decree.

All which is respectfully submitted, and the Master having hereby complied with the order of this Honorable Court in the premises, hereby prays that his report may be filed and considered by the Court, and that he may be allowed reasonable compensation for his services in this behalf, for which he asks the sum of five hundred dollars; together with the sum of twenty dollars for stenographic services in connection herewith.

N. B. K. PETTINGILL.
Special Master.

Exceptions of Complainant to Report of Special Master.

(Filed April 8, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Exceptions of Complainant to the Report of the Special Master.

Exceptions Taken by the Complainant to the Report Made Herein by N. B. K. Pettingill Appointed by Order of this Court on October 30, 1904, the Special Master in this Cause.

First. The complainant excepts to that part of the 23rd finding of fact wherein the Master computes that the balance re-
103 maining in the hands of the Defendant Garrozi unexpended is approximately Fifteen thousand dollars, (15,000.00), because it is not supported by the evidence and complainant is entitled to half of the Forty Eight thousand Eighty One Dollars and Eigh-

teen cents (48,081.18) shown to have been received by the defendant Garrozi from the transfer of the plantation Maria Antonia."

Second. The complainant further excepts to that part of the 24th finding of fact wherein the Master computed that only Twenty Two Thousand Dollars (22,000.00) of the amount of Forty Seven Thousand Dollars (47,000.00) claimed by the Defendant Garrozi to have been spent by him in his trips to Europe, because it is not justified by the evidence and it has not been shown that said amount was spent for the benefit of the conjugal partnership, and by the law of Porto Rico only expenditures for the benefit of the partnership can be charged to the same.

Third. Complainant excepts to the 26th finding of fact for the reason that the amount of Seventy One Thousand Dollars ($71,000.00) found by the Master to have been brought by defendant Garrozi to the marital partnership is excessive and not supported by the evidence, and, as Defendant Garrozi failed to make any reservation by deed in accordance with the law of the amount of property claimed to have been brought by him to the marital partnership, said properties having afterwards merged into the partnership fund, the same lost the character of individual property and he is prevented by law from claiming it as his own individual property.

Fourth. The complainant excepts to the 27th finding of fact wherein the Master finds that the defendant Garrozi, on the ninth day of June, 1902, was possessed of property to the value of Seventy Seven Thousand Dollars ($77,000.00), for the reason that said valuation is too low, contrary to the evidence and it fails to include the full amount of the proceeds of the sale of the plantation Maria Antonia" received by Garrozi.

Fifth. The complainant excepts to the 4th conclusion of law of the said Master because the same, being found on the 26th
104 and 27th finding- of facts excepted to by the complainant as not supported by the evidence in the case, and therefore has no application to this case.

Respectfully submitted.

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicitors for Complainant.

Exceptions of Defendants to Master's Findings.

(Filed April 8th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Exceptions of Defendants to Master's Findings.

Now comes the defendant Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza and except to the findings of fact and conclu-

sions of law filed herein by the Hon. N. B. K. Pettingill, Special Master, in the following particulars, to wit:

First. To the fifth findings of fact in this, that the uncontradicted testimony of Tomas Garrozi corroborated by several other witnesses as to his possession of Eighty Thousand Dollars ($80,000.00) in cash at the time of his marriage, was totally disregarded and that the Master finds that there were not any cash assets at the time of the marriage, because this finding is contrary to the evidence.

Second. To the twenty-second finding of fact that the transfers described in findings sixteen, seventeen, eighteen, nineteen and twenty were made without consideration and for the purpose of defrauding the complainant of her share in the marriage community assets, on the ground that the evidence does not justify this finding of fact, as the transfers made by Tomas Garrozi to Juana Maria Gonzalez were for a good and valuable consideration to wit, her services and work in his behalf for a great length of time, and the transfers to Domingo Piazza have been testified to by all three of the defendants to have been made in good faith and for a valuable con-
105 sideration and there is no proof to the contrary.

Third. To the twenty-third finding of fact in that part of it where it says that the money received by defendant Juana Maria Gonzalez on the transfer of the plantation "Maria Antonia" was really received by defendant Garrozi and that the interest of said Juana Maria Gonzalez at that time was entirely fictitious, on the ground that the transfer made to her of said credit was for a good and valuable consideration, to wit, her work and services in behalf of the defendant Garrozi.

Fourth. To the twenty-fourth finding of fact, in which the Master finds that the money spent by defendant Garrozi during the whole time of his marriage for curing himself of a very grave sickness and making trips to Europe in that behalf, amounting during four trips in 1889, 1890, 1895 and 1896 up to 1898 while he was being treated in Europe for about two years, to the sum of Forty Seven Thousand Dollars ($47,000.00), was an excessive expense and therefore the Master finds that Twenty Two Thousand Dollars ($22,000.00) ought to be deducted therefrom. The exception is founded on the reason that the health of the head of a family is a most important matter to attend to and that a sickness lasting for twelve or fifteen years, necessitating great care, attendance of nurses, extraordinary expensive attendance of physicians in Europe, the expenses of the trips, expenses of hotels and other expenses for a disabled sick man, will warrant in the financial condition and position in which Tomas Garrozi was at that time, an expenditure of Forty-seven Thousand Dollars ($47,000.00), and upon the reason that at that time there was not and there could not be the least intention on the part of Tomas Garrozi to make any expenses in fraud of his wife inasmuch as at that time there was not the least disagreement between them and inasmuch as they were living peaceably and well up to the time of the adultery committed by the complainant, his wife, which happened after the year 1898 and after these trips had been made.

Fifth. To the twenty-seventh finding of fact, that is to say
106 to that part of it which finds that the value of the estate "Luisa" at the time of the divorce in 1902 was Twenty Five Thousand Dollars ($25,000.00) and that the value of the estate "Leonor" was Fifteen Thousand Dollars ($15,000.00), as not warranted by the evidence in the case, competent and expert witnesses having testified that the first one is worth about Fifteen Thousand Dollars ($15,000.00) and the second one about Twelfe Thousand Dollars ($12,000.00).

Sixth. The defendants further except to the first conclusion of law that, notwithstanding the divorce of the wife for adultery, she has a right to share in the community property assets, as not warranted by the law.

Seventh. To the fourth conclusion of law finding that the complainant is entitled to the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750.00). The exception is founded on the following grounds:

1. That the evidence does not show any profits of the marriage society partnership at all, and

2. Because there is wrongfully charged against the defendant Garrozi the sum of Twenty Two thousand Dollars ($22,000.00), which he has spent many years ago for the purpose of curing himself of a grave and dangerous disease, such expense being a necessary expense and not made with any fraudulent intent, and therefore the charge thereof against him in the marriage society partnership liquidation is not warranted either by law or in equity.

Eighth. To the fifth conclusion of law that the complainant has a right to terminate the control of the defendant Garrozi over such interest in the marriage society property as the complainant may have, as not warranted either by the facts of the case or by the law.

Ninth. To the sixth conclusion of law finding the conveyances described in findings of fact numbered from eighteen to twenty-two inclusive, should be decreed to be null and void and that a decree
107 should be entered in conformity thereto, on the ground that such findings and conclusions of law are not warranted either by the fact proven in this case or by the law.

Tenth. The defendants except to the refusal of the master to find as a conclusion of law, as requested by the defendants, that the complainant is not entitled to any share in any marriage society profits on the ground of her adultery and the decree of divorce granted therefor to the defendant Garrozi.

Eleventh. Defendants except to the refusal of the Master to find as a conclusion of law, as requested by defendants, that the husband always remain the administrator of any property of his wife, including the marriage society assets, in case a divorce is granted to him on the ground of her adultery.

Twelfth. Defendants further except to the refusal of the Master to find as a conclusion of law, as requested by the defendants that there having been no marriage society assets at the time of the divorce no fraud can be presumed by any transfers or donations made

by the husband: Whatever transfers or donations he may have made, they were his own property and not of property any share of which belonged to the complainant.

Thirteenth. Defendants further except to the refusal of the Master to find, as requested by the defendants, as a conclusion of law that no fraud will be presumed and that, unless there is proof of fraud, transactions between parties will be considered as made in good faith.

Respectfully submitted.

C. M. BOERMAN,
Solicitor for Defendants.

Entry Overruling Exceptions of Complainant and Defendants Respectively.

(April 17, 1905.)

JUANA DASTAS
vs.
TOMAS GARROZZI ET AL.

The exceptions of the complainant and defendants respectively to the report of the Special Master upon his findings of law and fact in this case are overruled, the report of said Master is confirmed, and a decree will be entered in accordance herewith.

108 Thereupon the complainant calls up her motion for allowance of attorney's fees and files her affidavit in support thereof.

Final Decree.

(April 19th, 1905.)

In the District Court of the United States for Porto Rico, Sitting at San Juan.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Final Decree.

yes

This cause came on to be heard on this 19th day of April, 1905, at the regular April Term of this Court held in the City of San Juan, upon the application of comp-ainant by her Solicitors F. H. Dexter and José Hernandez for a final decree, and the Court having considered the report of the Special Master N. B. K. Pettingill and having considered the exceptions to the same filed respectively by complainant and by defendants, and having overruled the said exceptions respectively and having approved the report of the said Special Master, the following decree is entered, to wit:

I. The Court finds, orders and decrees that there is due to complainant Juana Dastas by defendant Tomas Garrozi y Pietri, from and by reason of the conjugal society or partnership existing between the said complainant and the said defendant Tomas Garrozi during the existence of the marriage between them since the 12th of May, 1886 until the date of the divorce between them on the 9th day of June, 1902, the sum of Thirteen Thousand Seven Hundred and Fifty Dollars (13,750.00), which said sum is a charge and lien against the properties and mortgages herein-after described.

II. The Court finds, orders and decrees that the transfers and attempted sales, as hereinafter set forth, of the properties mortgages hereinafter described, are fraudulent, simulated and void as against complainant; such attempted sales and transfers being as follows, to wit:

(*a.*) The transfer and sale executed by defendant Tomas
109 Garrozi to defendant Juana Maria Gonzalez on the 26th day of December, 1899, before the Notary José R. Nazario de Figueroa of San German, of the two masonry houses located in Borinquen Street of the Municipal-y of Yauco, recorded in the Municapal Registry under the respective numbers 40 and 42, as set forth in the bill of complaint.

(*b.*) Also the conveyance and transfer by defendant Tomas Garrozi to defendant Juana Maria Gonzalez, on the 25th day of May, 1900, before the Notary Manuel Solis, Notary Public of Yauco, Porto Rico, of the mortgage indebtedness of 80,135 pesos 31 centavos represented by *pacto de retro* or conditional sale executed by Gustavo and Quintin Ramirez for the sum of 80,135 pesos, 31 centavos upon the property known as Maria Antonia," as described in said bill of complaint.

(*c.*) Also the sale by the defendant Tomas Garrozi to defendant Domingo Piazza, by the notarial documents of the first and fourth days of August, 1900, before Manuel Solis, Notary Public of Yauco, Porto Rico, of the coffee plantation "Luisa" located in the barrio of Ranchers in the Municipality of Yauco, as also the transfer of the said coffee plantation by defendant Domingo Piazza on the first day of August, 1902, to defendant Juana Maria Gonzalez, as described in said bill of complaint.

(*d.*) Also the assignment and transfer by defendant Tomas Garrozi to defendant Domingo Piazza, on the 2nd day of August, 1900, of the mortgage credit upon the coffee plantation "Leonor" described in subdivision D of the amended bill of complaint, and also the transfer and assignment of the said plantation "Leonor," by the defendant Domingo Piazza to defendant Juana Maria Gonzalez by the deed of conveyance of August 1, 1902, as described in said bill of complaint. And the Court orders and decrees that the title to the said estate "Leonor" which was attempted to be acquired by defendant Piazza in the foreclosure proceedings described in the bill of complaint shall be and is declared to be vested in defendant Garrozi, subject to the trust in favor of complainant as herein stated.

(*e.*) Also the transfer and assignment by defendant Tomas
110 Garrozi to defendant Domingo Piazza, by the Notarial document executed on the 1st day of August, 1900, before the

Notary public Manuel Solis of Yauco, of the mortgage credit of Twelve Thousand pesos remaining upon the coffee plantation "Juanita," in the barrio of Aguas Blancs Municipality of Yauco, ans also the transfer and assignment of the said mortgage credit last above named, by the defendant Domingo Piazza to the defendant Juana Maria Gonzalez, by the document of August 1, 1902, as described in said bill of complaint.

(*f.*) Also the transfer and assignment by the defendant Tomas Garrozi to defendant Domingo Piazza, by notarial document before the Notary Rafael Leon of Ponce, On the 31st day of July, 1900, of the mortgage credit of 10,470 pesos 36 centavos upon the coffee plantation Mercedes" composed of three parts or parcels of land two of said parts or parcels being located in the barrio of Pasto, Municipality of Guayanilla, and the other part or parcel being located in the barrio of Aguas Blancas, Municipality of Yauco. Also the transfer and assignment of the said mortgage credit by defendant Domingo Piazza, on the 1st day of August, 1902, to defendant Juana Maria Gonzalez, as described in said bill of complaint.

III. And the Court finds, orders and decrees that all of the transfers above set forth, so made as aforesaid by defendants Tomas Garrozi and Domingo Piazza, were and are fraudulent, simulated and void and for the purpose of defrauding complainant in her just demands.

IV. And the Court finds, orders and decrees that the said properties and mortgage credits now really belong to defendant Tomas Garrozi, who holds the same in trust for the payment to complainant of the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750), and other costs and expenses herein found or to be found due in favor of complainant or in favor of this Court.

V. And the Court finds, orders and decrees that all of the said conveyances and assignments hereinbefore set forth be, and they are hereby cancelled, set aside and for naught held, and defendant Tomas Garrozi is held and declared to be the owner of the said properties, subject to the rights of complainant herein, as herein
111 above set forth, and that as to the amount herein found to be due to complainant, together with all costs, interests and charges in this decree or in these proceedings allowed, the said properties and mortgage credits shall be charged with a lien for the payment thereof.

VI. And the Court finds, orders and decrees that there is due to complainant the sum of Thirteen Thousand Seven Hundred and Fifty Dollars ($13,750.00) with interest thereon at six per cent per annum from the ninth day of June, 1902, the date of the decree of divorce between complainant and defendant Tomas Garrozi; the sum of Five Hundred Dollars ($500.00) which the Court hereby allows to the Special Master N. B. K. Pettingill, also the sum of Four Hundred Dollars ($400.00) which the Court hereby allows to the Special Examiner H. P. Leake, Esq. for reporting testimony herein, also all Court costs herein chargeable against defendant Garrozi and the Court hereby finds, orders and decrees that all costs in this case shall be paid by defendant Tomas Garrozi.

VII. It is provided, ordered and decreed by the Court that all of the foregoing amounts shall be paid by defendant Tomas Garrozi, for which complainant shall have execution in aid of this decree upon any other property of defendant which may be found subject to execution, other than the properties and mortgage credits hereinbefore described, but the said properties and mortgage credits shall be first offered for sale by the Master hereinafter appointed, and a sale of so much thereof will be hand by the said Master, under the rules and practice of this Court, as may be necessary to realize sufficient to fully discharge and pay all the sums allowed by this decree, together with interest and costs.

VIII. It is further *r*povided, ordered and decreed that the Registrars of Property of the District within which the properties and mortgage credits herein described are registered, shall note in their respective registries, in the manner provided for by law, this decree and the cancellation and annulment of the transfers and assignments herein above described. And it is further ordered
112 and decreed that complainant shall have execution against defen*d*dant and all property belonging to him for the recovery of all amounts authorized by this decree.

IX. The receiver appointed herein is hereby authorized and directed to make immediate report of all accounts in connection with the administration of the properties herein before described and to return to the registry of this Court all sums of money now in hand and all of said sums shall be subject to the payment, as far as possible, of the amounts by this decree allowed.

The Court hereby appoints H. P. Leake, Esq; as Special Master for the sale of the properties and mortgage credits above described if the same should be necessary for the payment of the sums herein allowed.

The Court reserves the right to make such other and further order herein as *amy* be necessary to carry out the terms and purposes of this decree.

CHAS. F. McKENNA, *Judge.*

Order Awarding an Allowance to Complainant for Expenses of Litigation and to Apply on Counsel Fees.

(Filed April 20th, 1905)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Awarding an Allowance to Complainant for Expenses of Litigation and to Apply on Counsel Fees.

Now, on this 20th day of April, 1905, at a session of this Court held in the City of San Juan, at the April Term, 1905, thereof, the following order was made and entered:

The motion of Complainant heretofore filed for an order awarding her payment of the alimony heretofore granted to her in the District Court of Ponce, and also a reasonable sum to pay on account of legal expenses and Attorney's fees in connection with
113 this suit, having been heretofore presented to this Court by Complainant's Solicitors and the same having been argued by Solicitors for Complainant and for Defendants respectively, and briefs having been filed by the respective Solicitors for and against the same, and the Court having fully considered the premises and having considered the allegations of the pleadings in the case with reference to the allowance of the sums hereinafter mentioned, by the District Court of Ponce, to Complainant, and having considered the amount of Counsel fees hereinafter specified to be reasonable,

It therefore orders that Defendant Tomas Garrozi shall pay to Complainant Juana Dastas and to her Solicitor F. H. Dexter the following sums to wit:

The amount awarded to *by* her by the District Court of Ponce as expenses of litigation	$598.00
Interest thereon at six per cent. per annum from A-gust 7, 1901, to date	133.50
Alimony awarded by the District Court of Ponce, July 15, 1901, at $75 per month computed to the date of the decree of divorce, July 9, 1902	885.00
Solicitor's fees to apply on account of legal services rendered by F. H. Dexter, Complainant's Solicitor	1,500.00
	$3,116.50

The Court further orders that the said amounts shall be paid by the Receiver out of any available funds in his hands, and if there be not sufficient funds in the hands of the Receiver to pay the same, Complainant shall have execution for the collection thereof.

The Court denies the application of Complai-ant for the allowance of $75 per month computed to the present time for the reason that Complainant's right to the liquidation and to her participation in the conjugal property is computed only to the date of the decree of divorce, July 9, 1902.

CHAS. F. McKENNA, *Judge.*

114 *Motion for an Extension of Time to File Bill of Exceptions.*

(Filed April 24th, 1905.)

United States District Court for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROSSI ET AL.

Now come the defendants herein by their Solicitor Chas. M. Boerman and pray this Honorable Court, that in view of the voluminous

pleadings, rules and testimony and exceptions thereto in the above entitled cause, the time to make and file a bill of exceptions and the statement of facts and ruling and the exceptions thereto, as required by the Statute in such cases, be extended to ninety days counting from the entry of the decree herein.

C. M. BOERMAN,
Solicitor for Defendants.

Entry.

(April 27th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Upon motion of C. M. Boerman, solicitor for the defendants herein, the amount of the supersedeas bond is fixed at $25,000.00.

Entry.

(April 29th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

The defendants herein are given until June 12, 1905, to present and file a bill of exceptions.

Petition for Appeal.

(Filed May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
115 TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZA.

The defendants herein, Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, feeling themselves aggrieved by the final decree made by this Court on the 19th day of April, 1905, whereby it was adjudged and decreed that the defendant Tomas Garrozi pay over to the complainant the amount of thirteen thousand seven hun-

dred and fifty dollars ($13,750), and also providing for other things and matters in favor of the complainant and against the defendants, and by the supplemental order to said decree made on the 20th day of April, 1905, whereby it is ordered that the complainant recover the amount of three thousand one hundred and sixteen dollars ($3,116) for her alimony, expenses of litigation and solicitors' fees, with interest thereon, do hereby appeal from the said order and decree for the reasons specified in the assignment of errors filed herein, and they pray that this appeal may be allowed and that a statement of the facts of the case in the nature of a special verdict and of the rulings of the Court and the admission or rejection of the evidence when excepted to, shall be made and certified to by this Court and transmitted to the Supreme Court of the United States, together with the transcript of the record, papers and proceedings upon which said order and decree were made, and of said order and decree duly authenticated; and that upon the giving of security by the defendants to the amount fixed by this Honorable Court, all further proceedings in this Court be suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

And your petitioners will ever pray.

C. M. BOERMAN,
Solicitor for Defendants.

Assignment of Errors.

(Filed May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI, JUANA MARIA GONZALEZ and DOMINGO PIAZZA.

116 Assignment of Errors.

Come now the respondents and file the following assignment of errors, upon which they and each of them will rely their prosecution of the appeal from the decree and order of this Honorable Court in the above entitled cause:

I.

That the United States District Court in and for the District of Porto Rico erred in entering a judgment and decree in favor of the complainant as against the defendants, contrary to the law and evidence of the case.

II.

That the said Court erred in not dismissing the bill of complaint and in not entering a judgment in favor of the defendants.

III.

That the said Court erred in entering a decree for a certain specified sum of money to wit, thirteen thousand seven hundred and fifty dollars ($13,750), while, under the law, upon the liquidation of the marriage community property only an aliquot part may be assigned to the spouses in what remains after having deducted the capital brought by each one of them to the marriage.

IV.

That said Court erred in allowing alimony, suit money and counsel's fees in a case which, under the amendments of the bill, is brought by a woman who has already been divorced from her husband on account of her adultery and is no more under his *patria*

V.

That said Court erred in overruling the plea of the defendants to the bill of complaint, as the bill of complaint was filed while the complainant was still the legal wife of the defendant Tomas Garrozi, and she then had no right in law to sue for a division of the mar-

VI.

That the said Court erred in allowing complainant to file an amendment to her bill of complaint, alleging that she was di-
117 vorced, after the divorce was granted her husband on the ground of her adultery, because that is a matter of supplemental bill and not of an amendment.

VII.

That the said Court erred in allowing another amended bill of complaint to be filed after the case was ready for final hearing and evidence had been taken, and putting in such amended bill of complaint matters which occur-ed after the filing of the original bill of complaint, because such matters are a subject for a supplemental bill and not for an amended bill of complaint.

VIII.

That said Court erred in overruling the plea of the defendant to the amended bill of complaint, that under the law of Porto Rico a woman who has been divorced from her husband on account of her adultery, has no right to a division of the marriage society assets.

IX.

That said Court erred in decreeing and ordering that the complainant should recover alimony which she was granted, *pendente lite* during the application for divorce by her husband, by another Court and which was not the subject matter of this suit at all.

X.

That the said Court erred in allowing the complainant suit money or expenses of litigation in a suit which, under the amended bills of complaint, she has instituted and could only institute under the law as a divorced woman and not as a married woman because as a married woman she had no right of action at all for the division of the marriage community assets.

XI.

That the said Court erred in allowing fifteen hundred dollars ($1500) as counsel fee to complainant's counsel in a suit which under the amended bill of complaint, she instituted, being already a divorced woman and not a married woman or under the *patria potestas* of her husband.

XII.

118 That the said Court erred in sustaining the objection of the complainant to the question by defendants' counsel on cross-examination, which was as follows: "So them it was not by judging the amount of the crop that you gave the value and it was not by the extent of the land? Your estimate then, was based simply on what other people said?", to which ruling the defendants

XIII.

That the said Court erred in not granting the motion of the defendants to strike out all the testimony of the witness Juan Macini Pietri referring to the plantation- "Leonor" and "Luisa," as being simple hearsay, after the witness had given the following answers to defendants' questions: Q. "You have testified something about the plantations "Luisa" and Leonor." What do you know about these farms?" Ans. "I have testified that the plantation "Luisa" produces a yearly average of 500 quintales, and the plantation "Leonor" about 300 quintales." Q. "How do you know that? Have you been managing these plantations?" Ans. "I Know it by what is said." Q. "That is all you know about it?" Ans. "Yes." To which ruling the defendants excepted.

XIV.

That said Court erred in overruling defendants' objection to the question by complainant's counsel as follows: "What is the value of the plantation- "Luisa" and Hortensia" today (1904)?" on the ground that it is too remote in time, the divorce having been granted in 1902 and liquidation, under the law, must be made as of the date of the divorce, to which the defendant- excepted.

XV.

That the said Court erred in overruling the objection of defendants to the question: "What was the value of the plantation "Juanita"

before he was married in 1886?" on the ground that the witness testifying had not qualified as an expert, to which defendants excepted.

XVI.

That the said Court erred in overruling the objection of defendants to the question: "How wealthy is he today?" (meaning Garrozi) on the ground that it calls for an opinion and that the Court erred in overruling the motion to strike the answer to the same question as an opinion, to which the defendants excepted.

XVII.

That the said Court erred in sustaining the objection to defendants' question on cross examination as follows: "When you said that the "Luisa" belongs to Tomas Garrozi are you willing to swear that it is regi*s*tered in his name?" to which ruling defendants excepted.

XVIII.

That the said Court erred in overruling the objection of defendants to the question of complainant: "What was this plantation worth before his marriage?" on the ground that the witness Gustavo Nin had not qualified as an expert, to which ruling the defendants excepted.

XIX.

That the said Court erred in overruling the defendants motion to strike out this witness Nin's testimony as to valuation after he gave to the question: "You base your calculation on the price you heard Mr. Pintade paid for it, do you?, the following answer: "Yes. He gave it to Pintade in liquidation for forty five thousand "pesos," to which ruling the defendants excepted.

XX.

That the said Court erred in overruling the defendants' objection to the question asked of witness Manuel Catala Dueña by the complainant, to wit, "What was the valuation of the plantation Juanita from the year 1881 to 1885?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXI.

That the said Court erred in overruling the objection of the defendants to complainant's question put to the same witness, to wit, "What was the valuation of the plantation Juanita in cash at that time?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXII.

That the said Court erred in overruling the objection of the defendants to complainant's question put to the same witness, to wit, "What was the value of the cock-pit?" to which ruling the defendants excepted.

XXIII.

That the said Court erred in overruling the defendants' objection to complaina-t's question put to the same witness, to wit, "What was the value of the other wooden house that he had?", also on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXIIII.

That said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the two other masonry houses?", on the ground that the witness had not qualified as an expert, to which ruling the defendant- excepted.

XXV.

That the said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the other property he had?", (meaning Garrozi), to which ruling the defendants excepted.

XXVI.

That the said Court erred in overruling the motion of defendants to strike out the answer of the same witness to the question of the complainant, "How much in cash?" (meaning Garrozi). Ans. "As proceeding from the "Juanita" he should have $28,000," on the ground that this is a personal opinion of the witness, to which ruling the defendants excepted.

XXVII.

That the said Court erred in overruling the objection of the defendants to complainant's question, to wit, "What is the title of the collection entered in 1897?"; also in overruling the objection of defendants to the questions of complainants: "What other collections were made in that year?"; "Of what items is this collection of 6000 made up?"; "What is the character of that entry of $6000 pesos?"; "Please refer to the other collection of 1000 pesos?", On the
121 ground that they are all too remote from the time, either of the marriage or of the divorce, to which ruling the defendants excepted.

XXVIII.

That the said Court erred in overruling the objection of defendants to the questions of complainant, to wit "Referring to the year 1898, What amount did you credit Garrozi?"; What payments did — make to Garrozi in the year 1898"; "And what amounts of money have you taken in or collected for him?"; "And in 1889 What collection did you make?", as being too remote in time from either the marriage or the divorce, to which ruling the defendants excepted.

XXIX.

That the said Court erred in overruling the objection of the defendants to the question of complainants, to wit, "What is the *title* of the amounts credited by you to Garrozi in 1903?", on the ground that it was too remote and after the divorce was granted and also to the question of complainant, "What amount did he take in provisions in 1903?", on the same ground, to which rulings the defendants excepted.

XXX.

That the said Court erred in overruling the objection of defendants to the question, "What was the value of the hacienda "Juanita" in the year 1880?"; and also to the question, "How many quintals did the hacienda "Juanita" produce about the year 1880 and from thence to 1886?", to which rulings the defendants excepted.

XXXI.

That the said Court erred in overruling the objection of defendants to the question, "Has Tomas Garrozi increased his wealth since the marriage in 1886?", on the ground that it calls for an opinion of the witness to which ruling the defendant excepted.

XXXII.

That the said Court erred in not admitting in evidence the birth certificate of Juana Maria Gonzalez marked "Exhibit" for the defendants to which ruling the defendants excepted.

122 XXXIII.

That the said Court erred in overruling defendants' demurrer to the evidence of the complainant to which ruling defendants excepted.

XXXIV.

That the said Court erred in sustaining the objection of complainants to defendants' question put to Garrozi as follows: "When you got married to Juana Dastas did she bring in any marriage portion to the matrimony—any property?"; and also to the question put to the same witness "During your marriage with her did she inherit*ed* any property from any one?"; and also to the question; did she receive any gifts from any other person except your-self?", to which ruling the defendants excepted.

XXXV.

That the said Court erred in sustaining the objection of the complainant to the introduction of the document marked Exhibit HHH for the defendant, to which defendants excepted.

XXXVI.

That the said Court erred in sustaining the objection of the complainant to defendants' question put to the witness Francisco Pavoli as follows: "Were you present in the—1886 at any such inventory?" (referring to inventory made by Garrozi of his property at the time of his marriage to which ruling defendants excepted.

XXXVII.

That the said Court erred in sustaining the motion of complainant to strike out the answer to the following question "Did you count the money?", which answer was: No, sir; Luis Garcia counted it. They were counting it on the table and when they had finished counting it they made a note of it and it amounted to 80,000 pesos. "And also the following answer to the question, "So what you know about that amount is what you have heard Garrozi say about it, Is it?", Whis answer was "Yes, and I also saw the money on the table, and as they counted it I heard them and they stated the amounts until they reached the sum of 80,000 pesos, and it was in gold
123 money," to which ruling the defendants excepted.

XXXVIII.

That the said Court erred in granting the motion of complainant to strike out the testimony of this witness Francisco Pavoli, except as to persons present, to which ruling the defendants excepted.

XXXIX.

That the said Court erred in granting the motion to strike out the testimony of this witness Pavoli or his answers to the two following questions: Q. "Did you see the whole inventory?" Ans. "I saw when the inventory amounted to sum 200,000 pesos and then I retired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying '80,000 dollars in gold:, 90,000 dollars in property; various mortgages and other credits," to which rulings the defendant excepted.

XXXX.

That the said Court erred in overruling the defendant's objection to the introduction of certificate of the Registrar of Property Marked Exhibit for the complainant to which ruling the defendants excepted.

XXXXI.

That the said Court erred in taking jurisdiction of this suit be removal from an Insular Court of Porto Rico, to wit, the District Court of Ponce, because this United States District Court for Porto Rico has no jurisdiction in this case and no power to remove it, as

one of the parties defendant to wit: Juana Maria Gonzalez, is a citizen of Porto Rico and the controversy by its nature is not a separable controversy, the allegation of the complaint being that a joint fraud was committed by all the three defendants together against the complainant; and also on the ground that a separable controversy can only be removed to the United States Court when a suit is pending between citizens of different states and not between aliens.

124 XXXXII.

That the said Court erred in confirming the Master's final report in this case.

XXXXIII.

That the said Court erred in overruling the exceptions of defendants to the fifth finding of fact, in this, that the uncontradicted testimony of Tomas Garrozi corroborated by several other witnesses as to his possession of Eighty Thousand Dollars ($80,000) in cash at the time of his marriage was totally disregarded and that the Court finds that there were not any cash assets at the time of the marriage, because this finding is contrary to the evidence.

XXXXVI.

That the said Court erred in overruling the exception of defendants to the twenty fourth finding of fact, in which the Master finds that the money spent by defendant Garrozi during the whole time of his marriage for curing himself of a very grave sickness and making trips to Europe in that behalf, amounting, during four trips in 1889, 1890, 1895 and in 1896 up to 1898 while he was *been* treated in Europe for about two years, to the sum of Forty Seven Thousand Dollars ($47,000), was an excessive expense and therefore the Master finds that Twenty Two Thousand Dollars ($22,000) ought to be deducted therefrom. The exception is found on the reason that the health of the head of a family is a most important matter to attend to and that a sickness lasting for twelve to fifteen years, necessitating great care attendance of nurses extraordinary expenses attendance of physicians in Europe, the expenses of the trip expenses of hotels and other expenses for a disabled sick man will warrant in the financial condition and position in which Tomas Garrozi was at that time an expenditure of Forty Seven Thousand Dollars ($47,000), and upon the reason that at that time there was not and there could not be the least intention of the part of Tomas Garrozi to make any expenses in fraud of his wife, inasmuch as at that time there was not the least disagreement between them and
125 inasmuch as they were living peaceably and well up to the time of the adultery committed by the complainant, his wife, which happened after the year 1898 and after these trips had been made.

XXXXVII.

That the said Court erred in overruling the exception of defendants to the twenty seventh finding of fact, that is to say, to that part of it which finds that the value of the estate "Luisa" at the time of the divorce in 1902 was twenty five thousand dollars (25,000) and that the value of the estate "Leonor" was fifteen thousand dollars (15,000), as not warranted by the evidence in the case, competent and expert witnesses having testified that the first one is worth about fifteen thousand dollars (15,000) and the second one about twelve thousand dollars (12,000).

XXXXVIII.

That the said Court erred in overruling the exception of defendants to the first conclusion of law, that, notwithstanding the divorce of the wife for adultery, she has a right to share in the community property assets, as not warranted by law.

XXXXIX.

That the said Court erred in overruling the exception of defendants to the fourth sonclusion of law, finding that the complainant is entitled to the sum of thirteen thousand seven hundred and fifty dollars ($13,750). The exception is founded on the following grounds:

1. That the evidence does not show any profits of the marriage society partnership at all, and

2. Because there is wrongfully charged against the defendant Garrozi the sum of twenty two thousand dollars ($22,000) which he has spent many years ago for the purpose of curing himself of a grave and dangerous desease, such expense being a necessary expense and not made with any fraudulent intent, and therefore the charge thereof against him in the marriage society partnership liquidation is not warranted either by law or in equity.

XXXXX.

That the Court erred in overruling the exception of defendants to the fifth conclusion of law that the complainant has a right
126 to terminate the control of the defendant Garrozi over such interest in the marriage society property as the complainant may have, as not warranted either by the facts of the case or by the law.

XXXXXII.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that the complainant is not entitled to any share in any marriage society profits on the ground of her adultery and the decree of divorce granted therefor to the defendants Garrozi.

XXXXXIII.

That the said Court erred in overruling the exception of the defendants to the refusal of the Master to find as a conclusion of law, as requested by defendants, that the husband always remains the administrator of any property of his wife, including the marriage society assets, in case a divorce is granted to him on the ground of her adultery.

XXXXXIV.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that there having been no marriage society assets at the time of the divorce, no fraud can be presumed by any transfers or donations made by the husband. Whatever transfers or donations he may have made, they were his own property and not of property any share of which belonged to the complainant.

XXXXXV.

That the said Court erred in overruling the exception of defendants to the refusal of the Court to find, as requested by the defendants, as a conclusion of law that no fraud will be presumed and that, unless there is proof of fraud, transactions between parties will be considered as made in good faith.

XXXXXVI.

That the said Court erred in holding that in case of divorce on the ground of adultery of the wife, she can take away the
127 administration of her property from the hands of her husband on the ground of any fraud committed by the husband during the period of the marriage.

Wherefore the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, plaintiffs in error, pray that the judgment, order and decree of the United States District Court for Porto Rico be reversed.

C. M. BOERMAN,
Solicitor for Plaintiffs in Error, Defendants in Lower Court.

Order Allowing Appeal.

(Filed May 23rd as of May 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Allowing Appeal.

On motion of Chas. M. Boerman, Esq., solicitor for defendants and upon filing a petition for an appeal and an assignment of errors, it is ordered that an appeal be, and hereby is, allowed to have reviewed *to* the Supreme Court of the United States the decree and supplemental order heretofore entered herein, and that the amount of the bond of appellants herein be, and the same hereby is fixed at twenty five thousand dollars ($25,000), and that the same bond when filed and approved by the Court shall have the effect of a supersedeas.

Dated May 23rd, 1905 as of May 1st 1905 *nunc pro tunc.*

CHAS. F. McKENNA, *Judge.*

Bond on Appeal.

(Filed May 20th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZA.

Bond on Appeal.

-now all men by these presents, that we, Tomas Garrozi,
128 Juana Maria Gonzalez and Domingo Piazza, as principals, and Juan Castañer and Juan Cortada as sureties, are jointly and severally held and firmly bound unto the above named Juana Dastas in the sum of twenty-five thousand dollars ($25,000) lawful money of the United States of America, to be paid to the said Juana Dastas, her executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 20th day of May, in the year of our Lord one thousand nine hundred and five.

Whereas lately at a session of the United States District Court for

Porto Rico, in a suit pending in said Court between the said Juana Dastas, complainant, and Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, respondents, a decree dated the 19th day of April, 1905, *were* rendered against the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, and the said Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza having obtained from said Court an order allowing an appeal to the United States Supreme Court to reverse the decree and order of the aforesaid suit, and a citation directed to the said Juana Dastas is about to be issued, citing and admonishing her to be and appear at the United States Supreme Court.

Now, therefore, the condition of the above obligation is such that if the above named Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazza, respondents herein, shall prosecute said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

TOMAS GARROZI.
DOMINGO PIAZZA,
By His Attorney in Fact, TOMAS GARROZI.
her
JUANA x MARIA GONZALEZ,
mark.
By LUIS MONROIG, *At Her Request.*

Witness:
JOAQUIN P. VALDIVIESO.

JUAN CASTAÑER.
JUAN CORTADA.

On this 20th day of May, 1905, before me there appeared Tomas Garrozi, Juana Maria Gonzalez and Tomas Garrozi as attorney in fact of Domingo Piazzi, and also Juan Castañer and Juan
129 Cortada all of them personally known to me, and they acknowledge- that they have executed the foregoing obligation.

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico,
By A. AGUAYO,
Deputy Clerk.

Approved this 20th day of May, A. D. 1905, to operate as a supersedeas.

CHAS. F. McKENNA, *Judge.*

U. S. OF AMERICA, *District of Porto Rico, ss:*

Juan Cortada and Juan Castañer each of them being duly severally sworn says, that each of them severally by himself is worth the amount of Twenty Five Thousand Dollars over and above his legal debts and liabilities and exemptions under the law in visible property in Porto Rico.

JUAN CASTAÑER.
JUAN CORTADA.

Sworn to before me this 20th day of May A. D. 1905.

A. AGUAYO,
Deputy Clerk U. S. Court.

Entry.

(May 20th, 1905.)

In the District Court of the United States for Porto Rico.

No. 107.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Now come the defendants herein by their Solicitor C. M. Boerman and present a new bond on appeal in this case.

Whereupon come the sureties on said bond Juan Castañer and Juan Cortada and each for himself acknowledges the execution thereof and after examination of said sureties said bond is approved by the Court and allowed to operate as a supersedeas.

Petition for Extention of Time to Prepare Transcript of Record.

(Filed May 23, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

The defendants herein, Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi, by their Solicitor Chas. M. Boerman, come now before this Honorable Court and show that the record in the above entitled case is a very voluminous one and that the
130 Clerk of this Court will not be able, even if occupying himself exclusively with this work, to do it within the thirty days prescribed by law; that the transmission of the said transcript to the Supreme Court at Washington will take another two weeks, and it is therefore necessary that the Court grant an extension of time to transcribe and file the record in the above entitled cause in the United States Supreme Court.

The defendants therefore pray that this Honorable Court grant an extension of time of ninety days in order that the Clerk of this Court may be enabled to do his work in a proper way and as prescribed by law.

C. M. BOERMAN,
Solicitor for Defendants.

Order Extending Time for Transmitting the Record.

(May 23, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order.

Upon motion of the defendants, it is hereby ordered that the time for transmitting the record to the Supreme Court of the United States in the above entitled case is extended to sixty days.

CHAS. F. McKENNA, *Judge.*

Statement of the Facts of the Case and of the Rulings of the Court on the Admission or Rejection of Evidence and Exceptions Thereto.

(Filed June 1st, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI, JUANA MARIA GONZALEZ, and DOMINGO PIAZZI.

Statements of the Facts of the Case and the Rulings of the Court on the Admission of Evidence and Exceptions Thereto.

131 1. Statement of Facts.

1.

The Complainant and defendant were married on the 12th day of May 1886, without any express marriage contract or other circumstance which varried in any respects the application of the legal principles governing community property.

2.

The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Suprem- Court of Porto Rico on the 9th day of June 1902, for complainant's adultery.

3.

The complainant was about fifteen years old at the time of her marriage; had been a servant in the house of her husband and brounght no property whatever to the marital partnership.

4.

The defendant was about forty six years old at the time of said marriage, and at that time was the owner of various properties, briefly described as follows:

A.—A coffee estate of nearly four hundred acres known as the "Juanita" but subject to a contract of sale of the one half interest to one Pintado.

B.—A mortgage given by Francisca Lluveras for the principal sum of 9,000 (pesos comerciales) which was, at that time practically equivalent to gold.

C.—A mortgage from Simon Fraticelly for the principal sum of 3269.79 pesos. (Mexican)

D.—A mortgage given by the brothers Antongiorgi for the sum of $18,000.00 gold.

E.—Two houses in Yauco valued at $2,500.00.

5.

The defendant Garrozi, in his testimony claimed to have had $80,000.00 cash in gold just previous to his marriage, but there is no other credible testimony to substantiate this claim,
132 and all serrounding circumstances are against the probability of his possession of any such sum.

According to Garrozi's own account, when he made the contract with Pintado touching the haciendas "Juanita" in 1881, he brought down from the estate when he came to live in Yauco, about $40,000.00, and before that time he had only loaned out two small sums amounting to $3,000.00, and no other source of income is shown except what he may have received under his contract with Pintado, the amount of which is left entirely indefinite. The evidence further shows that interest on the Lluveras mortgage was only partially paid, and the Antongiorgi mortgage was nor purchased until a short time before his marriage.

Considering this testimony in connection with the statements of the defendant Garrozi in his own testimony, the Court is forced to discredit Garrozi's statement as to the amount of $80,000.00 and that being discredited there is no evidence from which to find any cash assets at the time of the marriage.

6.

That in March, 1887, defendant sold the Fraticelly mortgage for its face value.

7.

That in May, 187, defendant Garrozi sold the Antongiorgi mortgage for its face value.

8.

That in February 1889, defendant Garrozi loaned on a mortgage on the estate "Leonor" $23,680.00 pesos current money which loan was afterwards reduced by payment of $17,300.00.

9.

That in the year, 1889, defendant Garrozi purchased the estate "Maria Antonia" from Gustavo Quintin Ramirez for the sum of $48,000.00 gold, with the right in the vendors to re-purchase within a specified time at the same price.

10.

That in July, 1890, defendant Garrozi loaned on a mort-
133 gage to Encarnacion Ramirez and amount which, inclusive of interest to July, 1895, equalled $23,398.76 current money. Neither the documentary nor the oral evidence clearly discloses the actual amount loaned at the time the mortgage was given, but as near as can be ascertained, the Court concludes that it was approximately equal to $10,000.00 gold.

11.

That in April 1891 defendant loaned on a mortgage to Mersedes Lluveras the sum of $10,470.36 current money.

12.

That in 1892 defendant Garrozi made a final liquidation with Pintado concerning the half interest in the hacienda "Juanita" which he had bargained to said Pintado in 1881, and acknowledged to have received the full sum of $42,000.00 current money for which he had sold said half interest to Pintado.

13.

That in February, 1893, defendant Garrozi sold the remaining half interest in the hacienda "Juanita" for the same amount $42,000.00 current money, payable in seven installments of $6000 each, in April of each of the years 1893 to 1899, inclusive; but the evidence does not disclose at what time any of *this* installments were actually paid.

14.

That in 1894, the original loan of 9000 (pesos comerciales) made to Francisca Lluveras, as stated in the finding numbered 4 (B), had, with interest and change in the unit value, grown to $20,774.78 current money, of which the then owner of the land paid to defendant Garrozi the sum of $5,011.32 in reduction of the mortgage, and defendant Garrozi sold the remainder of the mortgage credit for the remainder of its face value, to wit: $15,763.46.

15.

That in June 1894 the defendant loaned the sum of $15,000.00 current money on the undivided one-half interest of Tomas Olivari
134 in the hacienda "Luisa" and in July of the same year he loaned the sum of $7,000.00 current money upon the other one-half interest of Adela Santoni in the same estate "Luisa."

16.

That defendant Garrozi brought suits in the District Court of Ponce for the foreclosure of his two mortgages on the said hacienda "Luisa," as a result of which said property was adj-dicated to him by the decree of Court dated 4th and 19th of July, 1900, and on the 1st day of August 1900, defendant Garrozi transferred his title to said "Luisa" which he had obtained in said foreclosure suits, to Domingo Piazzi, for a consideration as expressed in deeds of $7200.00 for one undivided half and $6000.00 for the other undivided half which amounts the deeds of conveyance recited were left in the possession of said Piazzi on account of an indebtedness theretofore existing from said defendant Garrozi to Piazzi. The said Piazza afterwards, in the month of August, 1902, transferred the same to defendant Juana Maria Gonzalez, for the expressed consideration of $10,000.00.

17.

That on the same first day of August 1900, the defendant Garrozi transferred to Domingo Piazzi the balance of the mortgage remaining due from Pintado on the estate "Juanita" referred to in finding numbered 13 above, then amounting to $7,200.00 gold for the price of $4,800, which the instrument of assignments recited was left in the hands of said Piazzi in part payment of indebtedness from the defendant Garrozi, and on the 1st day of August 1902, said Piazzi assigned said mortgage credit for a recited consideration of $4,000.00 to the defendant Juana Maria Gonzalez in like manner as the property referred to in the previous finding was transferred.

18.

In December, 1899, said defendant Garrozi transferred to defendant Juana Maria Gonzalez for the recited consideration of $6,000 current money, which was then provincial pesos the two houses referred to in finding numbered 4 (E).

19.

The mortgage given by Mercedes Lluveras referred to in
135 finding numbered 9 was, on July, 31, 1900, transferred by defendant Garrozi to said Domingo Piazzi for a recited consideration of $6,282.22, which said Garrozi acknowledged to have received from Piazzi, and on the same 1st day of August, 1902, said Piazzi, assigned the same to defendant Juana Maria Gonzalez for a recited consideration of $4,000.00.

20.

On the same day, August 1, 1902, said Piazzi transferred to defendant Juana Maria Gonzalez, for a recited consideration of $10,000.00 acknowledged to have been received the said hacienda "Luisa" referred to in finding- numbered 15 and 16, together with another property consisting of two hundred and fifty cuerdas (250) called the Hortensia" the two properties thus forming one hacienda

of seven hundred and seventy five cuerdas, under the name of "Luisa."

21.

On May 28, 1900, the defendant Garrozi transferred to defendant Juana Maria Gonzalez all rights and titles to the plantation "Maria Antonia" referred in finding numbered 9, for the recited consideration of $48,000.00 acknowledged to have been received and on July 1, 1901, said defendant Juana Maria Gonzalez, represented by the defendant Garrozi under a general power of attorney executed to him on May 28, 1900, transferred the same to Gustavo and Quintin Ramirez for the recited consideration of $48,081.18 the said transfer bee- made in pursuance to the right of repurchase reserved by said Gustavo and Quintin Ramirez in the deed of sale which they made to defendant Garrozi.

22.

The Court concludes from these facts that all the foregoing transfers described in findings numbered 16, 17, 18, 19, and 20, were made by the parties thereto, without consideration, with knowledge of whatever rights the complainant may be found to have in said properties as community property of the said marital partnership, and for the fraudulent purpose of defrauding said complainant out of whatever share she might have in said properties. The
136 Court further concludes from these facts that the $48,081.18 alleged to have been received by the defendant Juana Maria Gonzalez from the transfer of the Plantation "Maria Antonia" was in fact received by the defendant Garrozi, who really acted in his own interest while pretending to represent the defendant Juana Maria Gonzalez as her attorney in fact, the interest of the said Juana Maria Gonzalez being at the time entirely fictitious; but that some part of said money was expended or reinvested by the defendant Garrozi in the acquirement of the plantation "Hortensia" and the improvements on the haciendas "Luisa" and "Leonor" after their transfer into the name of Juana Maria Gonzalez.

The Court concludes therefore that the balance remaining in the hand of defendant Garrozi unexpended is approximately $15,000.

24.

That said defendant Garrozi made several trips to Europe during the continuance of his marital partnership, and spent large sums of money by reason thereof, which were, as near as can be determined from his testimony, the following amounts:

In 1889	$10,000.90
In 1890	7,000.00
In 1895	5,000.00
In 1896–98	25,000.00
Total	$47,000.00

Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness. But said testimony is not substantiated by that of any other credible witness, while if true it could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the Court is forced to the conclusion, either that said defendant has exaggerated the amounts expended, or that such extravagant expenditures were not either necessary or reasonable, and hence not
137 a proper charge against the property of the marital partnership.

It seems that twenty five thousand dollars ($25,000.00) would have been a liberal expenditure under the circumstances for a man in defendant's Garrozi condition of life.

The Court therefore concludes that twenty-two thousand dollars ($22,000.00) of the amount should be charged against the separate property of defendant Garrozi.

25.

The defendant Garrozi received in installments from Pintado between the years 1893 and 1899 the sum of $30,000.00 provincial money, under the contract with Pintado referred to in finding numbered 12, but there is no evidence to show on what particular dates any specific parts of said sums were received.

26.

That the capital brought by defendant Garrozi to the marital partnership is therefore found to be as follows:

1. The hacienda "Juanita" which the Court concludes was then reasonably worth	$40,000.00
2. The mortgage from Francisca Lluveras, value	9,000.00
3. The mortgage from Simon Fraticelli	2,000.00
4. The mortgage from Antongiorgi	18,000.00
5. The two houses and lot in Yauco	2,500.00
Total	$71,500.00

27.

That at the time of the dissolution of the said marital partnership, to wit: on the 9th day of June, 1902, the defendant Garrozi was possessed of the following property:

1. Two houses and a lot in Yauco valued at	$6,000.00
2. Mortgage credit from Mercedes Lluveras	6,000.00
3. Mortgage credit from Encarnacion Ramirez.	10,000.00
138 4. The plantation "Luisq"	25,000.00
5. The plantation "Leonor"	15,000.00
6. Cash remaining from the sale of "Maria Antonia"	15,000.00
Total	$77,000.00

II. *Statement of the Rulings of the Court on the Admission or Rejection of Evidence and Exceptions Thereto.*

1.

On the cross-examination by defendants' counsel of complainant's witness Juan Macini Pietri, the following question was asked "So then it was not by judging the amount of the crop that you gave the value, and it was not by the extent of the land? Your estimate, then, was based simply on what other people said?" in order to show that the witness' testimony was only hearsay. The objection of complainant's counsel to this question was sustained by the court, to which ruling the defendants excepted.

2.

A motion was then made by defendants' counsel to strike all the testimony of this witness referring to the plantations "Leonor" and "Luisa" as being simply hear-say, after the witness had given the following answers to defendants' question: Q. "You have testified something about the plantations "Luisa" and "Leonor." What do you know about those farms?" Ans. "I have testified that the plantation "Luisa" produces a yearly average of 500 quintales, and the plantation "Leonor," about 300 quintales." Q. "How do you know that? Have you been managing these plantations?" Ans. "I know it by what is said." Q. "That is all you know about it?" Ans. "Yes." The Court overruled the motion of the defendants, to which ruling the defendants excepted.

3.

On the direct examination of complainant's witness Marcial Santoni by complainant's counsel, the question was asked:
139 "What is the value of the plantation- "Luisa" and "Hortensia" today "1904?" Defendants objected on the ground that it was too remote in time. The Court overruled the objection, to which ruling the defendants excepted.

4.

On the direct examination of complainant's witness Jorge Massenden, the following question was asked by complainant's counsel: "What was the value of the plantation "Juanita" before he was married in 1886?" Defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "This plantation Juanita had a positive value of 25,000 pesos cash.") The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Jorge Massenden.
Q. How long have you lived in Yauco?
Ans. For thirty odd years.
Q. How long have you known Garrozi?
Ans. From the year 1882.
Q. Did you know him before that time?
Ans. No.
Q. What was his occupation in 1882?
Ans. He was in the "Juanita."
Q. Was that his property?
Ans. At that time it was his property
Q. What other property did he have in Yauco ? in the year 1882?
Ans. In 1882 I knew only this property, and in 1883 I knew Mr. Garrozi had a house in Rosarie street, Yauco.
Q. Besides that house what other property did he have in 1883?
Ans. I do not know what other property he had.
Q. Did he have any other?
Ans. In a few years he bought a store.
Q. In what year was that?
Ans. I cannot state accurately
140 Q. What property did he have in 1886 before he married?
Ans. Those three only.
Q. What was this house worth at that time?
Ans. At that time it might have been worth about $1,500.
Q. You mean in the current money of Porto Rico?
Ans. No; in gold.
Q. What was the value of the house in current money at that time?
Ans. 2,000 pesos Mexican.
Q. What was the value at that time of the other property he had in Yauco?
Ans. It had a value of 6,000 pesos before the second storry was built, in the same Mexican currency.
Q. When was the second story built?
Ans. After the year 1886.
Q. After his marriage?
Ans. Yes.

5.

The same witness was asked by complainant's counsel "How wealthy is he (meaning Garrozi) to-day?" Defendants objected to this question as being incompetent and calling for an opinion only.

The Court overruled the objection to which ruling the defendants excepted.

6.

A motion to strike the answer to the foregoing question, which was as follows: "He must have at least $150,000," on the ground

that it was an opinion of the witness, was overruled by the Court, to which ruling the defendants excepted.

7.

On the cross-examination by defendants of complainant's witness Alejandro Agostini, the following question was asked: "When you said that the "Luisa" belongs to Tomas Garrozi, are you willing to swear that it was registered in his name?" Complaina-t's objection to this question was sustained by the Court, to which ruling the defendants excepted.

8.

On the direct examination by complainant of complaina-t's
141 witness Gustavo Nin, the following question was asked: "What — this plantation (referring to Juanita") worth before his (referring to Garrozi) marriage?" Defendants objected on the ground that the witness had not qualified as an expert. (The following a-swer was given to this question by the witness: "About 20,000 pesos.") The objection was overruled by the Court, to which ruling the defendants excepted. "The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Gustavo Nin.
Q. Where do you live?
Ans. In Yauco.
Q. How long have you lived there?
Ans. I was born there.
Q. Do you know Tomas Garrozi.
Ans. Yes.
Q. How long have you known him?
Ans. Since he came to Porto Rico.
Q. Did you know his father.
Ans. I knew him when I was a boy.
Q. Have you had any business with Garrozi.
Ans. Yes.
Q. Before his marriage?
Ans. No; but afterwards.
Q. Before his marriage, what property did he have?
Ans. A coffee plantation, a wooden house in Yauco and two masonry houses there.
Q. What plantation was that?
Ans. The "Juanita," the one belonging to Pintado now.

9.

A motion was made by the defendants to strike this witness Nin's testimony as to the valuation after he gave to the question: "You

base your calculation on the price you heard Mr. Pintado paid for it? Do, You? The following answer: "Yes," he gave it to Pintado in liquidation for 45,000 pesos "And to the question: "And that is what you base your calculation on, is it?", The following answer; "As he gave it in liquidation for that price I suppose it is worth more than half of that." The Court overruled the motion to which ruling the defendants excepted.

10.

Complainant's witness Manuel Catalá Dueño was asked by the complainant the following question: "What was the value
142 of the plantation "Juanita" from the year 1881 to 1885?", "to which question the defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answer was given to this question by the witness: The plantation "Juanaita" in the year 1881 had a value of 40,000 pesos, because this was the value they agreed upon when the transaction of the partnerchip was made.")

11.

The same witness was asked by complainant the following question: "What was the value of the plantation "Juanita" in cash at *tah*t time?", to which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answer was given to this question by the witness: "In my judgment from twenty to twenty five thousand pesos.")

12.

The same witness was asked by complainant the following question: "What was the calue of the cock-pit?", to which defendant objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by th*w* witness: "The cock-pit may have been worth from six to eight hundred pesos.")

13.

The same witness was asked by complainant the following question: "what was the value of the other wooden house that he had?" To which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. "The following answer was given to this question by the witness: "2,500.00" pesos.)

14.

The same witness was asked by complainant the following question: "What was the value of the other two masonry houses?, To

which defendants objected on the ground that the witness
143 had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted. "The following answer was given to this question by the witness: "from four to five thousand pesos.")

15.

The same witness was asked the following question "What was the value of the other property?" "He (meaning Garrozi) had?," to which defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection to which ruling the defendants excepted. (The following answeer was given to this question by the witness: "The house located in the street whose name I do not remember, was worth 600 pesos"),. The whole of the testimony of this witness up to this point was as follows:

(Direct examination.)

(By Mr. HERNANDEZ:)

Q. What is your name?
Ans. Manuel Catalá Dueña.
Q. What is your occupation?
Ans. Judicial agent.
Q. Do you live in Yauco.
Ans. Yes, for twenty one years.
Q. When did you move to Yauco?
Ans. In the year 1881.
Q. Do you know Garrozi?
Ans. Yes.
Q. Since when?
Ans. Since my arrival in Yauco.
Q. Do you know his property interest and business?
Ans. Yes.
Q. Have you be*ing* his agent on different occasions?
Ans. I have acted as his agent on one occasion. I was employed by him to take some account at his house.
Q. As such agent and by reason of such employment have you had opportunity to know his financial standing, and become familiar with his interest?
Ans. To a great extent.
Q. When was Mr. Garrozi married, do you remember?
Ans. In the month of May 1886.
Q. Before that time what part did you take in his property interest?
An*d*. I took no interest in his property interests. But as protocol clerk of the Notary at Yauco, I intervened in the documents executed by him at Yauco.
144 Q. And you had opportunity to see the title deeds that he had before his marriage?
Ans. Yes.
Q. What property did he have before his marriage?

Mr. BOERMAN: I object as the question calls for an answer that is not the best evidence and is simply hearsay. There are writings in existence showing these properties.

Ans. He owned an estate in the Barrio of "Aguas Blancas."

Q. What was that estate?

Ans. It was a coffee hacienda called "Juanita," which he had turned over to Isidoro P-ntado to have it liquidated, and after being liquidated for the price put upon it, the property then belonged to both of them.

Q. Did you see the title deeds to that property?

Ans. I have seen them many times., and I have had opportunities of taking copies from it and drawing instruments in regard to the same matter. He had besides a house; I do not remember the name of the street; besides that he had a masonry house and another wooden house next to the first one where they had a cock-pit; he had besides a mortgage on the estate "Reustaurado" belonging to Juan Antonio Negron for the amount of 10,000 pesos or more.

Q. Did you see the title dee-s to this property?

Mr. BOERMAN: I object to it as hearsay and secondary and not the best evidence.

Q. Have you had in your hand and had occasion to read the title deed to these properties?

Mr. BOERMAN: I object to this class of evidence as it is incompetent is purely hearsay and secondary.

Ans. I had an opportunity of *seen* the ti-les referring to the plantation "Juanita" and of the house of masonry in Rosario Street, and the title of the mortgage on the plantation "Restaurado," but as to the others I have not seen them.

Q. As to what have you not seen?

Ans. The house where the cockpit was, and Mr. Garrozi had besides two masonry houses in Borinquen St. masonry buildings, one of which a second story was added.

Q. In what notarial office were you in Yauco?

145 Ans. In the only one then existing, that of Don Juan Zacarias Rodriguez.

Q. *Where* there any more title deeds in that office of property of Mr. Gar-ozi?

Ans. I do not know. According to the time I was there there were no more.

Q. What time were you there?

Ans. From 1881 to 1884 and 1885.

Q. If there had been any other title deeds would you have seen them?

Ans. Yes.

Q. What was the value of the plantation "Juanita" from the year 1881 to 1885?

Ans. The plantation "Juanita" in the year 1881 had a value of 40,000 pesos, because this was the value they agreed upon when the transaction of the partnership was made.

Q. Was that a cash value or time payments?

Ans. It was not a cash value as it was agreed upon as the price to be paid in a certain number of years. It was what was due on it.

Q. In how many years?

Ans. In ten years.

Q. What was the value on the plantation "Juanita" in cash at that time?

Ans. In my judgment from twenty to twenty five thousand pesos.

Q. Why?

Ans. For the reason that its value had to be paid in a number of years. The sale was by installments.

Q. What was the value of the cockpit.

Ans. The cockpit may have been worth from 6 to 800 pesos.

Q. How do you know it?

Ans. If I remember rightly, Mr. Garrozi sold the house at this price to Mr. Antonio Franceschi.

Q. What was the value of the two other masonry houses?

Ans. From four to five thousand pesos.

Q. How do you know it?

Ans. This was the assessment for the collection of the taxes, and it was made at this price, because later on when Mr. Garrozi transferred these houses to Maria Gonzalez, one of then had been reconstructed, making a two story house of it, and he did it for the sum of 6,000 pesos.

Q. What was the value of the other property he had?

Ans. The house located in the street whose name I do not
146 remember was worth six hundred pesos.

16.

The same witness was asked by complai-ant the following question: "How much money in cash (meaning Garrozi)?" To which question the witness gave the following answer: "As proceeding from the "Juanita," he should have $28,000." Defendants then moved to strike out the answer as being an opinion of the witness, which motion was overruled by the Court and the defendants excepted.

17.

The following questions were asked of complainant's witness Juan Fernandez on direct examination: Q. "What is the title of the collection entered in 1897?2 Ans. "On April 20th 6,000 pesos, provincial or Mexican, from Isidoro Pintado." Q. "What other collection- were made in that year?" Ans. "May 28th, 1898, 1,000 pesos." Q. "Of what items is this collection of 6,000 made up?" Ans. "The collection from Pintado and on other from Mrs. Mercedes Rivera." Q. "What is the character of that entry of 6,000 pesos?" Ans. "The entry is a credit for the reason that Pintado made a payment on account." Q. Please refer to the other collection of 1000 pesos?"

The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the

witness.) "I cannot determine, but we can see here (meaning in the book) the amounts that refer to the provisions.

21.

Complainant's witness Fancisco Negroni y Lucca was asked by complainant the following question: "What was the value of the hacienda "Juanita?" Defendants objected to this question as being too remote. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "It was worth 40,000 pesos.")

22.

The same witness was asked by complainant the following question "How many quintals did the hacienda "Juanita" pro-
147 duce about the year 1880 and from then to 1886?" Defendants objected to this question as being too remote in time. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "From 350 to 400 quintals.")

23.

The same witness was asked by complainant the following question: "Has Tomas Garrozi increased his wealth since his marriage in 1886?" Defendant objected to this question on the ground that it calls for an opinion of the witness. The Court overruled the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "Yes, after his marriage he increased it.")

24.

The defendants offered in evidence the birth certificate of Juana Maria Gonzalez, co-defendant herein, by which it was intended to show that she is not a sister of the other defendant Tomas Garrozi, as alleged and claimed by the complainants. The Court refused to admit said birth certificate, to which ruling the defendants excepted.

25.

Defendant Tomas Garrozi, as a witness in his own behalf, was asked by his counsel the following question: "When you got married to Juana Dastas, did she bring in any marriage portion to the matrimony—any property?" Complainant objected to this question and the Court sustained the objection, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "Not a single cent. I had to buy her a dress and clothes, even to the stockings.")

26

The same witness was asked by defendants' cou-sel the following question: "During your marriage with her did she inherited any

property from any one?" To which question the complainant objected and the Court sustained the objection. To which
148 ruling the defendants excepted. (The following answer was given to this question by the witness: "No, not a cent, from any person whatsoever.")

27.

The same witness was asked by defendants' counsel the following question: "Did she (meaning the complainant) receive any gifts from any person except yourself (meaning the defendant Garrozi)?" Complainant's objection to this question was sustained by the Court, to which ruling the defendants excepted. (The following answer was given to this question by the witness: "No, not that I know of.")

28.

The defendants offered in evidence a certificate of the registrar of Property of the city of Ponce as to a mortgage upon the plantation "Rufina" ceded to Mr. Franceschi by Garrozi, in order to show the amount of his property before his marriage. Complainant objected to the admission of said certificate and the Court sustained the objection, to which ruling the defendants excepted.

29.

The witness Francisco Paoli on behalf of the defendants was asked by defendants' counsel the following question: "Were you present in the year 1886 at any such inventory (referring to inventory made at the time of the marriage)?" Ans. "Yes."

Q. Do you remember his marriage?" Ans. "Yes." Q. Was that before or after his marriage?" Ans. "Yes." Q. Before or after?" Ans. "Before." Q. Was it in the beginning of the year?" Ans. "I cannot state exactly whether it was in the beginning of April or of May." Q. How did you come to be present at that inventory?" Ans. "I had the necessity of going to see Garrozi in order to obtain some money from him and when I reached the house I found that he was busy in making this inventory with Mr. Luis Garcia, of his properties." Q. "Did you take any part in the making of that inventory?" Ans. "They asked me to take a seat and I saw that they were making an account in regard to some money."

Q. "Did you see what amount of money it was?" Ans. I
149 saw that they counted and put down on a paper 80,000 and some odd dollars, in gold money it was." Q. "Did you see that money?" Ans. "Yes." Q. "What did you do then?" Ans. "I was standing there waiting until they finished with the business and then they referred to other properties, such as mortgages, up to the amount of 200,000 pesos, and as I saw that it was getting late and that they were busy I retired." Complainant objected to this testimony and made a motion to strike it as hearsay. Said motion was sustained by the Court, to which ruling the defendants excepted.

30.

On cross examination the same witness was asked by complainant the following question: Q. "Did you count the money?" Ans. "No. sir Luis Garcia counted it. They were counting it on the table and when they had finished counting it they made a note of it and it amounted to 80,000 pesos." Complainant moved to strike this answer and the Court sustained the motion, to which ruling the defendants excepted.

31.

The same witness was asked the following question on cross-examination: Q. "So what you know about that amount is what you have heard Garrozi say about it, is it?" Ans. "Yes," and I also saw the money on the table, and as they counted it I heard them and they stated the amounts until they reached the sum of 80,000 pesos, and it was in gold money." Complainant moved to strike this answer and the Court sustained the motion, to which ruling the defendants excepted.

32.

Complainant moved to strike the testimony of this witness and the Court sustained the motion except as to persons present, to which ruling the defendants exce-ted.

33.

The same witness was asked the following questions by complainant: Q. Did you see the whole inventory?" Ans. "I saw when the inventory amounted to some 200,000 pesos and then I re-
150 tired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying "80,000 dollars in gold," 90,000 dollars in property;" various mortgages and other credits." The complainant moved to strike this testimony and the Court sustained the objections, to which ruling the defendants excepted.

34.

Complainant offered in evidence a certificate of the Registrar of Property of San German with its translation. The introduction of said certificate was objected to by the defendants for the reason that it was immaterial irrelevant and incompetent and does not show the properties possessed by Garrozi at the date of his divorce from the complainant Juana Dastas, but properties owned by him at a former date. This objection of defendants was overruled by the Court, to which ruling the defendants excepted.

Which are all the rulings on the testimony made by the Court and the exceptions thereto made by the defendants and insisted upon as errors.

The said statement of facts and of the rulings of the Court with exceptions of defendants to such ruling, is hereby certified to by this Court to be a correct and true statement of such.

CHAS. F. McKENNA, *Judge.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico do hereby certify that the foregoing is a true and correct transcript of the proceedings, pleadings orders, and decrees etc. had, filed and entered in the above entitled suit, and of record in this Court.

Witness, my official signature and the seal of said Court at Ponce, Porto Rico, this 27th day of June, 1905 and the 129th of the Independence of the United States *fo* America.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE, *Clerk.*
By A. AGUAYO,
Deputy Clerk.

151 [Endorsed:] No. —. In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi *et al.* Transcript of Record.

152 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Juana Dastas and F. H. Dexter, her Attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for Porto Rico, wherein Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. F. McKenna, Judge of the District Court of the United States for Porto Rico, this 22 day of May, A. D. 1905, and of the independence of the United States the one hundred and twenty-ninth.

CHAS. F. McKENNA,
United States District Judge for Porto Rico.

Attest:

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk District Court of U. S. for P. R.

Return on Service Writ.

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein-named Francis H. Dexter as Attorney for Juana Dastas

by handing to and leaving a true and correct copy thereof with him personally at Mayaguey in said District on the 27 day of May, A. D. 1905.

H. S. HUBBARD,
U. S. Marshal,
JOHN L. HAAS, *Deputy.*

153 [Endorsed:] In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi. Citation. Marshal's fees 1 service $2.00.

154 In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Transcript of the Motion for a Receiver and Injunction, Order Appointing a Receiver, etc., Order Designating Receiver, Motion for the Discharge of the Receiver and Entries as to Same.

Motion for Receiver and Injunction.

(Filed November 3, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion for Appointment of Receiver and an Injunction.

To the Honorable Chas. F. McKenna, Judge:

Your petitioner, complainant Juana Dastas, respectfully represents that since the institution of the above entitled cause it has come to her knowledge that defendant Tomas Garrozi is managing and controlling the properties described in the bill of complaint herein, and which, as alleged in said bill of complaint, have been by him fraudulently transferred and assigned to defendants Juana Maria Gozalez, in whose name the same are now inscribed in the registry of property.

Complainant states that, notwithstanding the inscription of these properties in the books of the registry in the name of defendant Juana Maria Gozalez, defendant Garrozi is the actual and real owner thereof and he is collecting the fruits, rents, profits and interest accruing therefrom.

Complainant states that since the fraudulent transfers set forth in the bill of complaint, defendant Garrozi has no other available property subject to execution in this district and that, he, prior to the

bringing of this suit, and ever since then has disposed of and concealed all of his available property in such manner as to place
155 it beyond the reach of process; and as to the real estate and mortgage credits in said bill of complaint described, other than the sugar plantation "Maria Antonia" for which he received in cash the sum of Forty Eight Thousand Dollars ($48,000-), said defendant Garrozi is and has been since the institution of this suit deriving all the profits, proceeds, rents and interests therefor from and has been secreting the same so as to hinder and delay complainant in the collection of her just claim herein or of any decree which may be entered herein in her favor against said defendant Garrozi.

Complainant states in particular that the coffee plantation denominated "Luisa" (but composed of the two properties Luisa and Hortensia) has produced a crop of coffee this year of more than four hundred (400) quintals, and defendant Garrozi has begun to remove the said crop upon said property for the purpose of appro-priating it to his own use.

Complainant further states that the superintendent or "Mayordomo" of the said plantation is Don José Ocasio who is employed by defendant Garrozi and who is mismanaging said plantation in pursuance of the said wrongful and fraudulent design of the said Garrozi in order to deprive complainant of her due and legal rights in the said property.

Complainant further states that the plantation "Leonor" is also in charge of defendant Garrozi, by and through his employee Vicente Antonini, and the said defendant Garrozi is and has been since the institution of this suit collecting the crops of said plantation and appropriating the proceeds thereof to his own use; and the crops and proceeds of both of said properties are now being misappro-priated in pursuance of the fraudulent design of defendant Garrozi as aforesaid and for the purpose of squandering and misappropriating the proceeds and profits thereof and placing them beyond the reach of the process of this Court. Complainant states that there is now upon the said plantation "Leonor" a crop of coffee of at least two hundred (200) quintals.

156 The said coffee is worth approximately twelve dollars a quintal ($12) and therefore the value of both crops is approximately seven thousand two hundred dollars ($7,200). which the said defendant Garrozi is endeavoring to collect by proceeding immediately to the gathering of all of the said coffee and the sale thereof for his own use and benefit.

Complainant further states that the interest upon the mortgage credits "Juanita" and "Mercedes" is and has been collected by defendant Garrozi and is being secreted by him so as to place it beyond the reach of the process of this Court so that it may not be subject to complainant's claim.

Complainant further states that defendant Garrozi has wrongfully and fraudulently made certain arrangements with the mortgagors of said mortgages in by which he intends to collect the same and appropriate the same to his own use in fraud of complainant's rights in the same.

Complainant avers that defendant Garrozi is collecting rents and

incomes from the houses in Yauco described in the bill of complaint as well as from other sources, all of which are being secreted and set apart for the purpose of defeating complainant's right and making ineffective any decree of this Court in her favor.

Complainant states that unless a Receiver is appointed by this Honorable Court to take charge of all of the properties described in the bill of complaint, as well as of other and further properties and assets claimed and owned by defendant Garrozi, such properties will be greatly wasted and depreciated, as well as subjected to many fictitious and fraudulent claims and liens which said defendant Garrozi is about to place thereon and further, the said defendant Garrozi will thus confiscate and place beyond the reach of the process of this Court the income, interest and profits of the said properties and assets aforesaid, one half of which rightfully belong to complainant.

Complainant further states that she has reason to believe that defendant Juana Maria Gonzalez, acting under the fraudulent and wrongful direction and control of defendant Garrozi, is about to enter into and make certain simulated and fraudulent mortgages and conveyances of the properties described in the bill of complant, in which complainant has an interest, in order to embar-ass complainant in the collection of any decree which may be rendered in her favor herein and for the purpose of endeavoring to avoid the annulment of the fraudulent transfers set forth in the bill of complaint herein.

Complainant states that unless an injunction is issued to and against Juana Maria Gonzalez, enjoining and restraining her from transferring, mortgaging, or otherwise encumbering said
157 property during the pendency of this suit, complainant's rights will be wholly lost and destroyed and this suit and any decree rendered therein will prove ineffectual.

Complainant therefore prays that a Receiver be appointed by this Honorable Court to take charge of and manage all of the properties of defendant Garrozi, of all kinds and description, and to care for the same under the orders of this Court during the pendency of this suit; to collect all profits arising from the said properties or the rents, interest or income therefrom; to proceed diligently to the collection of all mortgages and other indebtedness due defendant Garrozi from all sources whatsoever; and to hold all moneys assets and properties so received and held by him, the said Receiver, subject to the orders and decrees of this Court herein. And further, that a temporary injunction issued directed to defendants Juana Maria Gonzalez, enjoining her from selling, mortgaging or otherwise transferring or encumbering any of the properties, mortgages or other assets described in the bill of complaint, in any manner or form whatsoever, until the further order of this Court.

As to such Receiver, he shall have the usual powers of Receivers appointed to preserve property pending litigation and to do all such acts as may be necessary thereto in order to prevent misappropriation, loss or waste.

F. H. DEXTER,
Solicitor for Complainant.

Juana Dastas, being duly sworn upon her oath, says that the facts set forth above are true.

This 31 day of October, 1904.

Subscribed and sworn to.

M. ALBERTO SALICRUP, (*Notary.*)

Order Appointing a Receiver, Granting Injunction, etc.

(November 7th, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Appointing a Receiver, Granting an Injunction, etc.

On this 7th day of November, 1904, appear in open court in the City of San Juan, complainant by her Solicitor F. H. Dexter,
158 and defendants by their Solicitor C. M. Boerman.

The motion of complainant heretofore filed, praying for the appointment of a Receiver and the granting of an injunction as incident thereto having been presented and fully argued by Counsel and the Court having considered the same and the affidavits in support thereof and in opposition thereto; it is now ordered that such motion be granted and that a Receiver shall be appointed. On or before the 11th of November, 1904, the parties may agree upon such a Receiver but in the event that they are unable or fail to agree on such Receiver, the Court will then name the Receiver.

Such Receiver when appointed shall take the usual oath of receivers and shall give bond to guarantee the faithful performance of his duties as such in the sum of Ten Thousand Dollars ($10,000).

An injunction bond in the sum of one thousand dollars ($1,000) shall be given by complainant in the usual form.

The said Receiver shall take charge of all the porperties described in the Bill of Complaint herein, and shall carefully and prudently manage the same during the period of his administration. He shall properly cultivate, care for and collect the crops upon the plantation "Luisa" consisting of the property known as "Luisa" and "Hortencia," and shall also take charge in a similar manner of the estate known as "Leonor" described in the Bill of Complaint. He shall further collect the mortgage credits and interests thereon as described in the Bill of Complaint, and shall pay all taxes and other legitimate expenses that may be proper in connection with the due and orderly administration of his duties as such Receiver, but all extraordinary or unusual expenditures must first be authorized by the Court. Said Receiver shall have authority to employ such assistants, "mayordomos" or other employees as may *be* reasonably be necessary for the care of the said estates and the administration of his trusts. He shall also collect all rents and income except as hereinafter provided.

It is ordered that defendant Juana Maria Gonzalez may
159 continue residing in the house in which she is now living, for which she shall pay no rent, until the further order of this Court, but neither the said defendant Juana Maria Gonzalez nor the defendant Tomas Garrozi or any person, whether acting under them or in their behalf or otherwise, shall interfere in any *am*nner with the Receiver or his assistants or employees in the administration and care of the said estates or in the discharge of his duties as such Receiver.

Defendant Juana Maria Gonzalez and the said defendant Tomas Garrozi and all persons acting under them or in their behalf or otherwise, are hereby enjoined from transferring, selling, encumbering or other otherwise disposing of any of the property or mortgage credits mentioned in the said bill of complaint.

The said Receiver shall also make an investigation for the purpose of making an inventory of all properties and assets of defendant Garrozi and shall with least practicable delay make return of schedule and appraisement to the Court.

The Receiver shall sell at the best price obtainable in the market, the coffee or other produce of the said estates; he shall diligently attend to the culivation of future crops pending his administration and he shall deposit all money received by him as such Receiver, in either the Credito y Ahorro Ponceño, or the banking house of De Ford and Company in Ponce for the safe keeping thereof and he shall have the right to draw thereon by check for such ordinary expenditures as may be necessary for the management and preservation of the said properties and assets or for such other sums as may be authorized by this Court.

Defendant Garrozi is hereby specially enjoined from interfering with the administration of said properties and assets in any *am*nner whatsoever, except as may be permitted or required by the Receiver for the benefit of the estates or properties under his charge.

The Receiver shall make semi-annual reports of the administration of his trust and at such other time as the Court or the Judge thereof shall order.

CHAS. F. McKENNA, *Judge.*

160 *Order Designating Receiver.*

(Filed Nov. 11th, 1904.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Order Designating Receiver.

The parties to the above entitled cause appearing in open Court the 11th day of November, 1904, at the city of San Juan, by their

respective Solicitors, F. H. Dexter and C. M. Boerman, and having agreed upon Samuel W. Eckman, Esq; as Receiver, the said Samuel W. Eckman is now appointed Receiver, of all the properties and assets described in the Bill of Complaint and all properties and assets belonging to Tomas Garrozi.

The said Receiver shall take the usual oath of office, as such, and, within ten days from this date he shall execute before the Clerk of this Court a bond for ten thousand dollars ($10,000.) provided for in the order made Nov. 7th 1904.

Defendants Tomas Garrozi, and Juana Maria Gonzalez are hereby required to *run* over to the said Receiver all books, accounts, deeds, and papers relative to the administration of the estates described in the Bill of Complaint or relating to the property and assets of Tomas Garrozi, as well as all implements tools, cattle and personal property of all kinds and description belonging to defendant Garrozi and use- upon any of the estates described in the said Bill of Complaint and neccessary for the administration thereof.

CHAS. F. McKENNA, *Judge.*

Motion for the Discharge of Receiver.

(Filed May 5th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Motion for the Discharge of the Receiver.

Now come the defendants, by Chas. M. Boerman, their Solicitor, and show to this Honorable Court that a decree adjudging
161 the complainant herein a certain sum of money to be paid by the defendants, has been entered in this Court on the 19th day of April, 1905; that an appeal from said decree has been allowed by this Court and a sepersedeas bond in the sum of Twenty Five Thousand Dollars ($25,000.) have been approved and filed in this Court to respond for the said sum decreed to be due to the complainant and all her costs and damages in that behalf; and that there is no more necessity for the continuance of the receivership in this suit.

Therefore moves this Honorable Court that the Receiver hereto appointed herein shall be ordered to render his final account and to be dischsrged of his duties as Receiver.

C. M. BOERMAN,
Attorney for Defendants.

Entry on Journal of Court.

(May 5, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI ET AL.

Now come the defendants herein by their Solicitor C. M. Boerman and file a motion for the discharge of the Receiver. Whereupon the complainant is granted until May 6, 1905, to prepare an answer to said motion.

Entry on Journal of Court.

(June 6, 1905.)

In Equity.

JUANA DASTAS
vs.
TOMAS GARROZI.

The petition for the discharge of the receivership herein is heard and overruled, to which the defendants except. Whereupon said defendant files a motion to set aside an order heretofore made, allowing the Receiver's expenses and fees, and said motion being heard is overruled, to which the defendant excepts. Whereupon the Court makes the following order, to wit:

162 *Order.*

The resignation of the Receiver in the above entitled action, Mr. Samuel W. Eckman, having been presented to the Court, and the final accounts of said receiver having been filed and approved by order of the Court, on motion of Albert F. Hunt, Jr., attorney for the receiver, it is ordered that the resignation of said receiver, Mr. Samuel W. Eckman, be accepted and that he be relieved from all further duties in connection with said receivership.

Order Appointing C. A. Teller, Receiver.

(June 9th, 1905.)

In the District Court of the United States for Porto Rico.

JUANA DASTAS
vs.
TOMAS GARROZI.

Order.

It appearing that an order was entered herein on Tuesday, June 6th, 1905, accepting the resignation of Samuel W. Ecman as Receiver of the properties of the defendant Tomas Garrozi, and

It further appearing that an order was entered overruling the petition of said defendant to discharge the receivership, and the parties hereto having failed to agree upon the appointment of any one as said Receiver, and

It further appearing that there is no one in charge of said properties, and that great damage is likely to ensue on account thereof, the Court now hereby appoints C. A. Teller as such Receiver, who, upno duly qualifying by giveing a bond of Ten thousand Dollars, (10,000.00) will take charge of the Administration of said properties turned over by S. W. Ecman, the former Receiver herein.

CHAS. F. MACKENNA, *Judge.*

UNITED STATES OF AMERICA, *District of Porto Rico, ss:*

I, H. H. Scoville, Clerk of the District Court of the United
163 States for Porto Rico do hereby certify that this is a true and correct transcript of the motions, orders and entries filed, entered and of record in the above entitled cause in reference to the appointment of a Receiver in said cause.

Witness my official signature and the seal of said Court at Ponce, Porto Rico, this 27th day of June, 1905 and in the 129th of the Independence of the United States of America.

[Seal United States District Court for the District of Porto Rico.]

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico.
By A. AGUAYO,
Deputy Clerk.

[Endorsed:] In the District Court of the United States for Porto Rico. Juana Dastas *vs.* Tomas Garrozi *et al.* Transcript of motions, orders, entries in reference to the appointment of a Receiver.

Endorsed on cover: File No. 19,829. Porto Rico D. C. U. S. Term No. 327. Tomas Garrozi, Juana Maria Gonzalez and Domingo Piazzi, Appellants, *vs.* Juana Dastas. Filed July 5th, 1905. File No. 19,829.

FILE COPY.

Supreme Court of the United States.

Office Supreme Court U.S.
FILED
APR 28 1906
JAMES H. McKENNEY

OCTOBER TERM, 1905.

No. [redacted]72

TOMAS GARROZI, JUANA MARIA GONZALEZ AND DOMINGO PIAZZI,

Appellants,

vs.

JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF ON BEHALF OF APPELLANTS.

CHARLES M. BOERMAN,
Counsel for Appellants.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

Supreme Court of the United States.

NUMBER 327.

TOMÁS GARROZI, *et al*,
Appellants,

vs.

JUANA DASTAS,
Respondent.

BRIEF FOR APPELLANTS.

Statement.

This is an appeal from a final decree and order made by the District Court of the United States for Porto Rico. This suit was commenced in the Insular District Court of the District of Ponce by the complainant, while she was still the wife of one of the defendants, to wit: Tomás Garrozi, by a Bill of Complaint filed in that Court (Record, p. 1). On separate petitions of each one of the defendants (Record, pp. 14, 20 and 21) the case was removed to the United States District Court for Porto Rico. A motion to remand was made and denied by the Court (Record, p. 18). Thereupon the complainant filed reformed Bill of Complaint on the equity side of the United States District Court, adding one

more defendant to wit: Quintin Ramirez, who afterwards was dismissed from the case (Record, p. 28).

The demurrer of the defendants, based on the ground that a married woman cannot sue in her own name, was cured by an amendment to the Bill of Complaint (Record, p. 34). The plea of the defendants that a woman while still married cannot sue her husband for the liquidation of the marriage community (Record, p. 31) was overruled by the Court (Record, p. 39). After the answer of the defendants came in, a further amendment to the Bill of Complaint was allowed by the Court to be filed (Record, p. 36). Thereupon an answer to the amended Bill was filed (Record, p. 30). And afterwards an amendment to this answer (Record, p. 42). A general replication was then filed by the complainant (Record, p. 38), issue joined and testimony taken before an Examiner and the case referred to a Special Master.

When the case was ready for final hearing before the Special Master an amended Bill of Complaint was allowed by the Court to be filed (Record, p. 60). A plea thereto was filed (Record, p. 65), and overruled. A second plea was then filed (Record, p. 68). And an answer was then filed (Record, p. 69). Thereupon upon a motion to strike pleas and answer, the second plea has been ruled to stand as a part of the answer. A replication was then filed to the answer (Record, p. 76). After the issues have thus been joined for a second time, then upon some further testimony, in addition to the former, having been taken before the Examiner and upon the reference of the whole case to the Special Master for decision, a second hearing was had before him, and thereupon the Special Master filed his report (Record, p. 78). Exceptions were filed to the Master's Report by the complainant (Record, p. 85), and by the defendants (Record, p. 86). Upon the hearing of the exceptions the Court confirmed the Master's Report, and entered a decree in the case (Record, p. 89) and on the next day a supplemental order to the

said decree (Record, p. 92). A statement of the findings of fact and of the exceptions to the testimony was certified, by the Court (Record, p. 108). The assignment of errors was filed at the taking of the appeal (Record, p. 95).

The bill alleges that one of the defendants, to wit: Tomás Garrozi, the husband of the complainant, has made several fraudulent transfers of his property to the other defendants named in the Bill of Complaint, in order to deprive the complainant of her share in the assets of the marriage community property, and prays for the annullment of the deeds and for the liquidation of the marriage community property. The defenses relied on in the plea and answer to the last amended bill of complaint were: FIRST, that the complainant having been divorced for her adultery has lost all right to any share of the marriage community property assets; SECOND, that for the same reason she has lost all right to the administration of any of her property; THIRD, that there were no profits of the marriage community property, this property being at the time of the divorce worth less than at the time of the marriage and that the complainant never had contributed any property to the marriage community, and fourth and lastly, that all the transfers of the property between the defendants complained of in the bill of complaint were made in good faith and for a good and valuable consideration.

Specification of Errors.

The following, among other, were alleged as errors in the Court below (enumerated by the numbers in the assignment of errors):

XLI.

The Court erred in taking jurisdiction of this suit by removal from an Insular Court of Porto Rico, to

wit, the District Court of Ponce, because this United States District Court for Porto Rico has no jurisdiction in this case and no power to remove it, as one of the parties defendant, to wit: Juana María Gonzales is a citizen of Porto Rico and the controversy by its nature is not a separable controversy, the allegations of the complaint being that a joint fraud was committed by all the three defendants together against the complainant, and also on the ground that a separable controversy can only be removed to the United States Court when a suit is pending between citizens of different States and not between aliens.

V.

That the said Court erred in overruling the demurrer of the defendants to the bill of complaint, as the bill of complaint was filed while the complainant was still the legal wife of the defendant Tomás Garrozi and she then had no right in law to sue for a division of the marriage community assets.

VI.

That the said Court erred in allowing complainant to file an amendment to her bill of complaint, alleging that she was divorced after the divorce was granted her husband on the ground of her adultery, because that is a matter of a supplemental bill and not of an amendment.

VII.

That the said Court erred in allowing another amended bill of complaint to be filed after the case was ready for final hearing and evidence had been taken, and putting in such amended bill of complaint matters which occurred after filing of the original bill of complaint, because such matters are subject for a supplemental bill and not for an amended bill of complaint.

XLIX.

That the said Court erred in overruling the exception of defendants to the fourth conclusion of law of the Master's report, finding that the complainant is entitled to the sum of thirteen thousand seven hundred and fifty dollars. The exception is founded on the following grounds:

1. That the evidence does not show any profits of the marriage society partnership at all, and

2. Because there is wrongfully charged against the defendant Garrozi the sum of twenty-two thousand dollars, which he has spent many years ago for the purpose of curing himself of a grave and dangerous disease, such expense being a necessary expense and not made with any fraudulent intent, and therefore the charge thereof against him in the marriage society partnership liquidation is not warranted either by law or in equity.

L.

That the said Court erred in overruling the exception of the defendants to the fifth conclusion of law, that complainant has a right to terminate the control of the defendant Garrozi over such interest in the marriage society property as the complainant may have, as not warranted either by the facts of the case or by the law.

LI.

That the said Court erred in overruling the exception of the defendants to the sixth conclusion of law, finding the conveyances described in findings of fact numbered from eighteen to twenty-two inclusive should be decreed to be null and void and that a decree be entered in conformity thereto, on the ground that such findings and conclusions of law are not warranted either by the facts proven in this case or by the law.

LII.

That the said Court erred in overruling the exception of the defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that the complainant is not entitled to any share in any marriage society property on the ground of her adultery and the decree of divorce granted therefor to the defendant Garrozi.

LIII.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by defendants, that the husband always remains the administrator of any property of his wife, including the marriage society assets, in case a divorce be granted to him on the ground of her adultery.

LV.

That the said Court erred in overruling the exception of defendants to the refusal of the Master to find as a conclusion of law, as requested by the defendants, that no fraud will be presumed, and that unless there is proof of fraud transactions between parties will be considered as made in good faith.

III.

That the said Court erred in entering a decree for a certain specified sum of money, to wit, thirteen thousand seven hundred and fifty dollars, while under the law upon the liquidation of the marriage community property only an aliquot part may be assigned to the spouses in what remains after having deducted the capital brought by each one of them to the marriage.

IV.

That the said Court erred in allowing alimony, suit money and counsel's fees in a case which, under

the amendment of the bill, is brought by a woman who has already been divorced from her husband on account of her adultery and is no more under his *patria potestas.*

IX.

That the said Court erred in decreeing and ordering that the complainant should recover alimony which she was granted *pendente lite* during the application for divorce by her husband by another Court and which was not the subject matter of this suit at all.

XI.

That the said Court erred in allowing fifteen hundred dollars as counsel fee to complainant's counsel in a suit which, under the amended bill of complaint, she instituted, being already a divorced woman and not a married woman or under the *patria potestas* of her husband.

XII.

That the said Court erred in sustaining the objection of the complainant to the question by defendants' counsel on cross-examination, which was as follows: "So then it was not by judging the amount of the crop that you gave the value and it was not by the extent of the land? Your estimate, then, was based simply on what other people said?", to which ruling the defendants excepted.

XIII.

That the said Court erred in not granting the motion of the defendants to strike out all the testimony of the witness Juan Macini Pietri referring to the plantations "Leonor" and "Luisa," as being simply hearsay, after the witness had given the following answers to defendants' questions: Q. "You have testified something about the plantations

'Luisa' and 'Leonor.' What do you know about those farms?" Ans. "I have testified that the plantation 'Luisa' produces a yearly average of 500 quintals, and the plantation 'Leonor' about 300 quintals." Q. "How do you know that? Have you been managing these plantations?" Ans. "I know it by what is said." Q. "That is all you know about it?" Ans. "Yes." To which ruling the defendants excepted.

XIV.

That the said Court erred in overruling defendants' objection to the question by complainant's counsel as follows: "What is the value of the plantation 'Luisa' and 'Hortencia' to-day (1904)?" on the ground that it is too remote in time, the divorce having been granted in 1902 and liquidation, under the law, must be made as of the date of the divorce, to which the defendants excepted.

XV.

That the said Court erred in overruling the objection of defendants to the question: "What was the value of the plantation 'Juanita' before he was married in 1886?" on the ground that the witness testifying had not qualified as an expert, to which defendants excepted.

XVI.

That the said Court erred in overruling the objection of defendants to the question: "How wealthy is he to-day?" (meaning Garrozi), on the ground that it calls for an opinion; and that the Court erred in overruling the motion to strike the answer to the same question as an opinion, to which the defendants excepted.

XVII.

That the said Court erred in sustaining the objection to defendants' question on cross-examination,

as follows: "When you said that the 'Luisa' belongs to Tomás Garrozi, are you willing to swear that it is registered in his name?" to which ruling defendants excepted.

XVIII.

That the said Court erred in overruling the objection of defendants to the question of complainants: "What was this plantation worth before his marriage?" on the ground that the witness Gustavo Nin had not qualified as an expert, to which ruling the defendants excepted.

XIX.

That the said Court erred in overruling the defendants' motion to strike out this witness Nin's testimony as to valuation after he gave to the question: "You base your calculation on the price you heard Mr. Pintado paid for it, do you?" the following answer: "Yes. He gave it to Pintado in liquidation for 45,000 pesos," to which ruling the defendants excepted.

XX.

That the said Court erred in overruling the defendants' objection to the question asked of witness Manuel Catalá Dueña by the complainant, to wit, "What was the valuation of the plantation 'Juanita' from the year 1881 to 1885?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXI.

That the said Court erred in overruling the objection of the defendants to complainants' question put to the same witness, to wit, "What was the value of the plantation 'Juanita' in cash at that time?" on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXII.

That the said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the cock-pit?", to which ruling the defendants excepted.

XXIII.

That the said Court erred in overruling the defendants' objection to complainant's question put to the same witness, to wit, "What was the value of the other wooden house that he had?", also on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXIV.

That the said Court erred in overruling the objection of defendants to complainants' question put to the same witness, to wit, "What was the value of the two other masonry houses?", on the ground that the witness had not qualified as an expert, to which ruling the defendants excepted.

XXV.

That the said Court erred in overruling the objection of defendants to complainant's question put to the same witness, to wit, "What was the value of the other property he had?" (meaning Garrozi), to which ruling the defendants excepted.

XXVI.

That the said Court erred in overruling the motion of defendants to strike out the answer of the same witness to the question of the complainant, "How much money in cash? (meaning Garrozi). Ans. "As proceeding from the 'Juanita', he should have $28,000", on the ground that this is a personal

opinion of the witness, to which ruling the defendants excepted.

XXVII.

That the said Court erred in overruling the objection of the defendants to complainant's question, to wit, "What is the title of the collection entered in 1897"; also in overruling the objection of defendants to the questions of complainant: "What other collections were made in that year?"; "Of what items is this collection of 6,000 made up?"; "What is the character of that entry of 6,000 pesos?"; "Please refer to the other collection of 1,000 pesos.", on the ground that they are all too remote from the time, either of the marriage or of the divorce, to which ruling the defendants excepted.

XXVIII.

That the said Court erred in overruling the objection of defendants to the questions of complainant, to wit: "Referring to the year 1898, what amount did you credit Garrozi?" "What payments did you make to Garrozi in the year 1898?" "And what amounts of money have you taken in or collected for him?" "And in 1889 what collection did you make?" as being too remote in time from either the marriage or the divorce, to which ruling the defendants excepted.

XXIX.

That the said Court erred in overruling the objection of the defendants to the question of complainant, to wit, "What is the title of the amounts credited by you to Garrozi in 1903?", on the ground that it was too remote and after the divorce was granted; and also to the question of complainant, "What amount did he take in provisions in 1903?", on the

same ground, to which rulings the defendants excepted.

XXX.

That the said Court erred in overruling the objection of defendants to the question, "What was the value of the hacienda 'Juanita' in the year 1880?"; and also to the question, "How many quintals did the hacienda 'Juanita' produce about the year 1880 and from then to 1886?", to which rulings the defendants excepted.

XXXI.

That the said Court erred in overruling the objection of defendants to the question, "Has Tomás Garrozi increased his wealth since his marriage in 1886?", on the ground that it calls for an opinion of the witness, to which ruling the defendants excepted.

XXXVI.

That the said Court erred in sustaining the objection of the complainant to defendants' question put to the witness, Francisco Paoli, as follows: "Were you present in the year 1886 at any such inventory?" (referring to inventory made by Garrozi of his property at the time of his marriage), to which ruling defendants excepted.

XXXVII.

That the said Court erred in sustaining the motion of complainant to strike out the answer to the following question: "Did you count the money?", which answer was: "No, sir, Luis Garcia counted it; they made a note of it and it amounted to 80,000 pesos." And also the following answer to the question: "So what you know about that amount is

what you have heard Garrozi say about it, is it?", which answer was: "Yes, and I also saw the money on the table, and as they counted it I heard them and they stated the amounts until they reached the sum of 80,000 pesos, and it was in gold money", to which ruling the defendants excepted.

XXXVIII.

That the said Court erred in granting the motion of complainant to strike out the testimony of this witness Francisco Paoli, except as to persons present, to which ruling the defendants excepted.

XXXIX.

That the said Court erred in granting the motion to strike out the testimony of this witness Paoli or his answers to the two following questions: Q. "Did you see the whole inventory?" Ans. "I saw when the inventory amounted to some 200,000 pesos and then I retired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying '80,000 dollars in gold; 90,000 dollars in property; various mortgages and other credits", to which ruling the defendants excepted.

The argument in support of these several assignments of error with reference to the testimony and the ruling of the Court and the proceedings appears in the following points. The errors on the testimony and the rulings of the Court thereon grouped under the numbers 12 to 31 and 36 to 39 will be treated together in argument in one point on account of their similarity and to avoid multiplicity of argument.

POINTS.

FIRST POINT.

This Court has jurisdiction of this case on appeal.

SECTION 35 of the Act establishing the Government of Porto Rico (Act of April 12, 1900, Chap. 191, 31 St., 85) contains the following:

"SECTION 35. That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States, and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question and the right claimed thereunder is denied."

SECTION 702 of the Revised Statutes provides as follows:

"SEC. 702. The final judgments and decrees of the Supreme Court of any Territory, except the Territory of Washington, in cases where the value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party, or of other competent witness, exceeds one thousand dollars, may be reviewed and reversed or affirmed in the Supreme Court, upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of a circuit court."

SECTION 1 of the Act of March the 3d, 1885, Chap. 355, says as follows:

"That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit

at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars."

Construing these statutes in connection with the Act of 1889 establishing Circuit Courts of Appeals, this Court has decided that appeals may be taken from judgments or decrees of the United States District Court of Porto Rico, to the Supreme Court of the United States in all civil cases where the amount involved is more than five thousand dollars.

Royal Insurance Co. *vs.* Ruperto Martin, 192 U. S., 150.

SECOND POINT.

The United States District Court for Porto Rico had no jurisdiction to hear, try or determine this case and its decree must be annulled for want of jurisdiction.

(*A.*)

It has been repeatedly held that the Supreme Court will reverse the judgment of the lower Court in case that Court had no jurisdiction in a case removed to it from a State court, although it was the party appellant that had petitioned for the removal. It has been held that it is the duty of the Supreme Court even of its own motion to note critically the record upon which a case comes before it in order to test the jurisdiction of the Court below.

We quote the language of Justice Matthews in the case of Mansfield, C. & L. M. Ry. Co. and another *v.* Swan and others, 111 U. S., 379:

"On every writ of error or appeal the first and fundamental question is that of jurisdiction, first, of

this Court, and then of the Court from which the record comes. This question the Court is bound to ask and answer for itself, even when not otherwise suggested and without respect to the relation of the parties to it. This rule was adopted in Capron *v.* Van Noorden, 2 Cranch, 126, decided in 1804, where a judgment was reversed on the application of the party against whom it had been rendered in the Circuit Court, for want of the allegation of his own citizenship, which he ought to have made to establish the jurisdiction which he had invoked. This case was cited with approval by Chief Justice Marshall in Brown *v.* Keene, 8 Pet., 112.

In Jackson *v.* Ashton, 8 Pet., 148, the Court itself raised and insisted on the point of jurisdiction in the Circuit Court; and in that case it was expressly ruled that because it did not appear that the Circuit Court had jurisdiction, this Court, on appeal, had no jurisdiction except for the purpose of reversing the decree appealed from on that ground. And in the most recent utterance of this Court upon the point in Bors *v.* Preston, *ante*, 407, it was said by Mr. Justice Harlan: "In cases of which the circuit courts may take cognizance only by reason of the citizenship of the parties, this Court, as its decisions indicate, has, except under special circumstances, declined to express any opinion upon the merits, on appeal of writ of error, where the record does not affirmatively show jurisdiction in the Court below; this, because the courts of the Union, being courts of limited jurisdiction, the presumption is, in every stage of the cause, that it is without their jurisdiction unless the contrary appears from the record." The reason of the rule, and the necessity of its application, are stronger and more obvious when, as in the present case, the failure of the jurisdiction of the Circuit Court arises, not merely because the record omits the averments necessary to its existence, but because it recites facts which contradict it.

In the Dred Scott case, 19 How., 393–400, it was decided that a judgment of the Circuit Court upon

the sufficiency of a plea in abatement, denying its jurisdiction, was open for review upon a writ of error sued out by the party in whose favor the plea had been overruled. And in this view Mr. Justice Curtis, in his dissenting opinion, concurred; and we adopt from the opinion the following statement of the law on the point: "It is true," he said (19 How., 566), "as a general rule, that the Court will not allow a party to rely on anything as cause for reversing a judgment which was for his advantage. In this we follow an ancient rule of common law. But so careful was that law of the preservation of the course of its courts that it made an exception out of that general rule, and allowed a party to assign for error that which was for his advantage, if it were a departure by the Court itself from its settled course of procedure. The cases on this subject are collected in Bac. Abr. "Error," H, 4. And this Court followed this practice in Capron *v.* Van Noorden, 2 Cranch, 126, where the plaintiff below procured the reversal of a judgment for the defendant on the ground that the plaintiff's allegations of citizenship had not shown jurisdiction. But it is not necessary to determine whether the defendant can be allowed to assign want of jurisdiction as an error in a judgment in his own favor. The true question is not what either of the parties may be allowed to do, but whether this Court will affirm or reverse a judgment of the Circuit Court on the merits, when it appears on the record, by a plea to the jurisdiction, that it is a case to which the judicial power of the United States does not extend. The course of the Court is when no motion is made by either party, on its own motion, to reverse such a judgment for want of jurisdiction, not only in cases where it is shown, negatively, by a plea to the jurisdiction, that jurisdiction does not exist, but even when it does not appear, affirmatively, that it does exist (Pequingnot *v.* Pennsylvania R. Co., 16 How., 104). It acts upon the principle that the judicial power of the United States must not be exerted in a

case to which it does not extend, even if both parties desire to have it exerted (Cutler *v.* Rae, 7 How., 729). I consider, therefore, that when there was a plea to the jurisdiction of the Circuit Court in a case brought here by a writ of error, the first duty of this Court is, *sua sponte*, if not moved to it by either party, to examine the sufficiency of that plea, and thus to take care that either the Circuit Court nor this Court shall use the judicial power of the United States in a case to which the Constitution and Laws of the United States have not extended that power."

Capron *v.* Van Noorden, 2 Cranch, 126.
Brown *v.* Keene, 8 Pit., 112.
Jackson *v.* Ashton, 8 Pit., 148.
Bors *v.* Preston, 111 U. S., 252.
Dred Scott case, 19 How., 393–400.
Pequingnot *v.* Pennsylvania R. Co., 16 How., 104.
Cutler *v.* Rae, 7 How., 729.
Continental Insurance Co. *v.* Roades, 119 U. S., 237.
Torrens *v.* Sredd, 144 U. S., 533.
Hanrick *v.* Hanrick, 153 U. S., 192–198.
Neal *v.* Pa. Co., 157 U. S., 153.

(*B.*)

To entitle a party to removal of a cause to a United States Court, it must appear affirmatively upon the record that at the time of the commencement of the suit in the State Court and also at the time of the petition for removal the parties plaintiff or defendant had the divers citizenship and residence required by the statutes giving the right to remove. In the case at bar it appears from the original complaint filed in the District Court of Ponce (Record, p. 1) that the parties defendant were all of them residents of Porto Rico at the time of the commencement of the suit, and although it was denied by one of the defendants, it was admitted by the defendant Juana María Gonzalez, that she was

a resident of Porto Rico as well as a citizen of Porto Rico. It is also disclosed in the petition for removal by Juana María Gonzalez that she is a citizen and also a resident of Porto Rico and that she was such at the time of the filing of the petition for removal as well as at the commencement of the suit in the local court (Record, p. 20). The case could, therefore, not be removed to the United States District Court under the requirements of the statutes. To entitle a party to a removal the jurisdiction of the United States Court must appear affirmatively and unequivocally.

Mansfield, C. & L. M. Ry. Co. *v.* Swan, 111 U. S., 379.
Gibson *v.* Broce, 108 U. S., 561.
Grace *v.* American Cent. Ins. Co., 109 U. S., 278-283.
Robertson *v.* Cease, 97 U. S., 646.
New Orleans *v.* Winter, 1 Wheat., 91.
Williams *v.* Nottawa, 104 U. S., 209.

A defect, to show positively the requisite diverse citizenship of each party at the time of the commencement of the suit, cannot be cured by amendment of the bill.

In Stevens *v.* Nichols, 130 U. S., 230, Mr. Justice Harlan says:

"In cases where jurisdiction depends upon the citizenship of the parties such citizenship or the facts which in legal intendment constitute it should be distinctly and positively averred in the pleadings or they should appear affirmatively and with equal distinctness in other parts of the record."

In Crehore *v.* Ohio and M. Ry. Co., 131 U. S., 240, Mr. Justice Harlan, who delivered the opinion of the Court, says:

"All this is made entirely clear by the express requirements of the Act of 1875 that the Circuit Court shall remand to the Court from which it was re-

moved any cause brought from that Court, whenever it appears that it is not one of which the Federal Court can properly take cognizance (Cameron *v.* Hodges, 127 U. S., 322, 326). If a suit entered upon the docket of a Circuit Court as removed upon the ground of the diverse citizenship of the parties was never in law removed from the said Court, no amendment of the record made in the former could affect the jurisdiction of the latter or put the case rightfully on the docket of the Circuit Court as of the date when it was there docketed; for the only mode provided in the Act of Congress by which the jurisdiction of the State court of a controversy between citizens of different States can be divested is by presenting a petition and bond in that court showing in connection with the record a case that is removable."

Mr. Chief Justice Fuller in Jackson *v.* Allen, 132 U. S., 27, says as follows:

"It appears on the record that the citizenship of the parties at the commencement of the actions as well as at the time the petitions for removal were filed was not sufficiently shown, and that therefore the jurisdiction of the State court was never divested (Stevens *v.* Nichols, 130 U. S., 230). This being so, the defect cannot be cured by amendment."

In Graves *v.* Corbin, 132 U. S., 571, Mr. Justice Blatchford says as follows:

"Under the provisions of Section 5 of the Act of March 3, 1875, that if in any suit removed from a State court to a Circuit Court of the United States it shall appear to the satisfaction of said Circuit Court at any time after such suit has been removed thereto, that it does not really and substantially involve a dispute or controversy properly within the jurisdiction of said Circuit Court, it shall proceed no further therein, but shall remand the suit to the Court

from which it was removed as justice may require, this Court has held that when it appears to this Court that the case is one of which under that provision the Circuit Court should not have taken jurisdiction, it is the duty of this Court to reverse any judgment given below and remand the cause with costs against the party who wrongfully invoked the jurisdiction of the Circuit Court. Williams *v.* Nottawa, 104 U. S., 209. This rule has been recognized by this Court, to the extent even of taking notice of the want of jurisdiction in the Circuit Court, although the point has not been formally raised in that Court or in this Court, in Turner *v.* Trust Co., 106 U. S., 552-555; Railroad Co. *v.* Swan, 111 U. S., 379-386; Farmington *v.* Pillsbury, 114 U. S., 138-144; and Bridge Co. *v.* Ottoe Co., 120 U. S., 225-226. In Stevens v. Nicholls, 130 U. S., 230, it was held that, if a proper diversity of citizenship does not appear by the record to have existed both at the commencement of the suit and at the time of filing the petition for removal, this Court will remand the cause to the Circuit Court with directions to send it back to the State Court with costs against the party at whose instance the removal was made. This same principle was asserted in Crehore *v.* Railroad Co., 131 U. S., 240, where it was also held that where a suit is entered upon the docket of a Circuit Court as removed on the ground of the diverse citizenship of the parties, and was never in law removed, no amendment of the record made in the Circuit Court can affect the jurisdiction of the State Court, or put the case rightfully on the docket of the Circuit Court as of the date when it was so docketed."

(*C.*)

As it appears from the complaint filed in the Insular District Court (Record, p. 1) and specially from the petition of removal by Juana María Gonzalez (Record, p. 20), the complainant in this case

at the time of the filing and commencement of the suit was an alien and so were two of the defendants, but the third defendant, to wit, Juana María Gonzalez, was a citizen and a resident of Porto Rico. Now there are two theories only upon which a removal under these circumstances could be had; either under the second or under the third subdivision of Section 2 of the Act of March 3, 1887, as amended by the Act of August 13, 1888 (Supplement Two, Revised Statutes, Volume 2, Chapter 866, page 611). This act was made applicable to the courts of Porto Rico by Section 34 of the Act of April 12, 1900, called the Foraker law, which says: "The laws of the United States relating to appeals, writs of error and certiorari, removal of causes and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district courts of the United States and the courts of Porto Rico."

Now if the removal was under the second subdivision, then it is clear that the defendants, in order to be entitled to a removal must be non-residents, and upon the face of the petition of Juana María Gonzalez, as well as upon the face of the original complaint filed in the Insular Court, it appears that she was at that time a resident also and not only a citizen of Porto Rico.

It has been held by this Court that all the defendants must be non-residents.

Martin *v.* Snyder, 148 U. S., 663.

It has been invariably so held in innumerable cases in all the courts of the United States. It is also clear that all the defendants in order to be entitled to a removal must be non-residents from comparison of the language in the second, third and fourth subdivisions of Section 2 of said act. In the second subdivision the words are, "By the defendant or defendants therein, being non-residents of that State." The words of the third subdivision are

as follows: "Either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district." In the fourth subdivision the following words are used: "Any defendant, being such citizen of another State, may remove such suit into the Circuit Court of the United States for the proper district." It is clear and evident from the different language used in the quoted subdivisions that when Congress wanted to give the right of removal to any one of the defendants in case there are more than one defendant, it expressly said so in unequivocal language, and in subdivision two Congress intentionally omitted those words which it had used in subdivisions three and four.

In Parkinson *v.* Barr, 105 Fed. Rep., 81-83, it was held that "under the statute it is clear that in all cases where there is no separable controversy the right of removal can be exercised only by non-resident defendants," and it was further held in that case that "the law is well settled that suits between citizens of a State and foreign States, citizens of subjects can be removed only when the defendants are all non-residents of the State where the suit is brought."

Cudahy *v.* McGeoch (C. C.), 37 Fed. 1.
Walker *v.* O'Neill (C. C.), 38 Fed., 374.
Scott *v.* Cattle Co. (C. C.), 41 Fed., 225-227.
Purcel *v.* Mortgage Co. (C. C.), 42 Fed., 465.
Tracy *v.* Morel (C. C.), 88 Fed., 801.

If the removal right is urged upon the basis of the third subdivision of Section 2 of said act, that is to say, on the ground of a separable controversy, then the case at bar is not removable, because that clause in the third subdivision speaks only of cases pending between citizens of different States. And it was uniformly held that only citizens of any of the States can take advantage of that clause. Even

a State cannot take advantage of it, and aliens surely not.

Arkansas *v.* Kansas, 183 U. S., 185.
Stone *v.* State of Carolina, 117 U. S., 430.
Merchant Co. *v.* Insurance Co., 151 U. S., 368.
Postal Tel. Co. *v.* Alabama, 155 U. S. 482.
King *v.* Cornel, 106 U. S., 395.

It was also held that in removals on the ground of a separable controversy all the parties on one side must differ in citizenship from all the parties on the other side. In the case at bar the complainant is a citizen of France, an alien, and so are two of the defendants, but the third defendant, to wit: Juana Maria Gonzalez, is a citizen of Porto Rico.

Removal Cases, 100 U. S., 457.
Blake *v.* McKim, 103 U. S., 336.

Besides, it appears from the examination of the allegations of the complaint as well as of the whole record, that there was no separable controversy, as conspiracy between all the defendants to defraud the complainant was charged and the annullment of deeds between the three defendants was prayed for, and no judgment separately could be given in the case, which would not affect all the defendants alike. It was held that in conspiracy cases defendant cannot remove on separate counts.

Little *v.* Giles, 118 U. S., 596.
Louisville & R. Co. *v.* Ide, 114 U. S., 52.
Farmington *v.* Pillsbury, 114 U. S., 138.
Pirie *v.* Tvedt, 115 U. S., 41.
Crump *v.* Thurber, 115 U. S., 56.
Starin *v.* New York, 115 U. S., 248.
Sloane *v.* Andeson, 117 U. S., 278.
Insurance Co. *v.* Huntington, 117 U. S., 280.
Core *v.* Vinal, 117 U. S., 347.
Mining Co. *v.* Canal Co., 118 U. S., 264.
Hyde *v.* Rubble, 104 U. S., 407.
Ayres *v.* Wiswall, 112 U. S., 187-192.

THIRD POINT.

A married woman as long as the marriage has not been terminated by divorce or death has no right to demand the liquidation of the marriage community property.

The law is so clear about it that we need only cite the sections of the Civil Code referring thereto. (The Civil Code referred to is the one in force at the time of the divorce, that is to say, the Civil Code for Cuba and Porto Rico, translated into English by the War Department in 1900.)

Article 1417 of that Civil Code reads as follows: "The conjugal partnership expires on the dissolution of the marriage or when it is declared void. The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership. The conjugal partnership shall also terminate in the cases mentioned in Article 1433."

Article 1433 reads as follows: "The husband and wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or should have given cause for divorce. In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned."

As on account of the defendant Garrozi, the husband of the complainant, being a Frenchman by nationality, although she is a Porto Rican, and their marriage and divorce took place in Porto Rico, and their residence was in Porto Rico during the whole time of their marriage, there may be claimed that

the French law shall govern in this case, we will show in each point argued that the French law is identical with the law of Porto Rico in all respects as far as the marriage community is concerned, as both the French and Spanish Civil Codes are expositions of the same system. As far as the law argued in this point is concerned, we quote the French Civil Code, Article 1441, which says: "La communaute se dissout, 1_e, par la mort naturelle; 2_e, par la mort civile; 3_e, par la divorce; 4_e, par la separation de corps; 5_e, par la separation de biens."

Translated into English: "The community is dissolved, 1st, by natural death; 2d, by civil death; 3d, by divorce; 4th, by separation of the bodies; 5th, by separation of the goods."

Of course, the separation spoken of means judicially decreed, as in case of a separation by mutual consent the law would certainly leave it to the spouses themselves to stipulate about the community property.

The Court below therefore erred in overruling the defendants' plea and in not dismissing the case. It is true the bill of complaint has been amended after the answer came in, alleging that subsequently to the filing of the bill and answer the complainant has been divorced from her husband Tomás Garozzi, one of the defendants; but the rule is that matters which happen after the suit has commenced cannot be brought in by amendment, and can only come in by a supplemental bill.

We quote from Beach, Modern Equity Practice, Section 155: "As a general rule a bill cannot be amended for the purpose of stating in it new matters which have occurred subsequent to the commencement of the suit. A bill insufficient in itself is not aided by an amendment stating facts which may or may not be subsequent in time to the filing of the bill." "Where a feme sole who should have been made a defendant marries after the commencement of the suit against the other defendants, she cannot be brought before the Court with her hus-

band by an amendment of the original bill, but a supplementary bill is necessary."

Citing:

Clark *v.* Hall, 7, pp. 386-403; Mason *v.* Hartford, &c. R. Co., 10 Fed. Rep., 334; Bannon *v.* Comegys, 69 Md., 411; Killinger *v.* Hartman, 21 Neb., 297; Lyster *v.* Stickney, 12 Fed. Rep., 609; Copen *v.* Flesher, 1 Bond, 440; Keyser *v.* Renner's Admr., 87 Va., 249; Campbell *v.* Browne, 5 Paige, 34; Nichols *v.* Rogers, 139 Mass., 146.

Bates on Federal Equity Procedure, in Section 150, says: "It is a well-settled rule of Equity Pleading that nothing can be introduced or inserted in an original bill by way of amendment, which has arisen subsequently to the commencement of the suit; but the plaintiff may amend his bill by introducing any new facts which had occurred at the time the original bill was filed, which he, though apprised of their existence, did not think necessary to be stated or the existence of which he has discovered since the commencement of the suit. The reason of the rule is that amendments, when allowed, are always considered as incorporated in and as forming part of the original bill; the amendments and the original bill constitute one record; the amendments, in contemplation of law, bear the same date as the original, and relate to facts which existed when the original bill was filed; and it would be inconsistent, incongruous and irregular to introduce by amendments any facts which have occurred since the filing of the original bill. Matters which arise subsequently to the filing of the original bill should be introduced by supplemental bill."

Citing:

1 Daniel, 508, 509, 510; 1 Smith's Ch. Pr., 293; Stafford *v.* Howlett, 1 Paige Ch., 200; Hurd *v.* Everett, 1 Paige Ch., 124.

It follows that the two amended bills were allowed by the lower Court in error, and to great prejudice of the defendants, specially as the amendments were allowed after issue joined and the last amended bill of complaint was allowed after the testimony has been in, and the defendants in this way were deprived of much valuable testimony which they could have offered under a supplemental bill and were thereby prevented from having a fair trial of their case.

Disregarding then the amendments erroneously allowed by the Court, it follows that under the original bill of complaint the complainant had no capacity or right to sue.

FOURTH POINT.

Under the civil law a woman divorced for her adultery has no right of action for any share in the marriage community assets.

Article 73 of the Civil Code in force in Cuba, Porto Rico and the Philippines, contains the following:

"A decree of divorce shall produce the following effects:

1. The separation of the spouses.

5. The retention by the innocent husband of the administration, if he should have it, of the property of the wife, who shall only be entitled to support."

Spanish Civil Code.

Article 1434. After the separation of property has been ordered the conjugal partnership shall be dissolved, and its liquidation shall be made according to the provisions of this code. Never the less

the husband and wife shall mutually attend to their support during the separation and to the support of the children, as well as to their education, each one in proportion to his or her respective means.

The French Civil Code in Article 299, says:

"Pour quelque cause que le divorce ait lieu, hors le cas du consentiment mutuel l'epoux contre lequel le divorce aura ete admis, perdera tous les avantages que l'autre epoux lui avait faits, soit par leur contrat de marriage, soit depuis le marriage contracte."

Translated into English:

"For whatever cause the divorce take place, except for cause of mutual consent, the spouse against whom the divorce was decreed shall lose all the advantages which were made in his favor by the other spouse, be it through their marriage contract or be it after the marriage contract."

Ballinger on Community Property, Section 5, page 6, says as follows: "The wife forfeits her matrimonial gains when she has been guilty of adultery or abandons her husband without his consent."

Citing Schmidt's Civil Law, Art. 68; L. 5 and 11, t. 9, I. 5 Rec.; I. 5 and 11, t. 4, I. 10., Nov. Rec.

Article 1433 of the Civil Code, says as follows:

"The husband and the wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes Civil Interdiction, or should have been declared an absentee, or should have given cause for divorce. In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned."

It will be seen from this article clearly that only the innocent spouse has a right or action against the guilty party, if he wishes to use that right, for liquidation of the marriage community property, but never has the guilty party any such right or action. Even in case the guilty party has any separate property administered during the matrimony, by the husband, she is not entitled to it, but is only entitled to support, as seen from Article 73 of the Civil Code cited above.

Q. Mucius Scaevola in the commentaries upon the Civil Code, which are now being published in Spain and which are considered the greatest authority upon the Civil Code, in Volume 22, of said commentaries, in the chapter which treats of conjugal partnership and its incidents, maintains on page 374 and 375 of that volume the same view and gives to the cited articles of the Civil Code the construction we have given them.

FIFTH POINT.

In the liquidation of the marriage copartnership assets the legitimate expenses made by the husband during the duration of the marriage, no matter how large they were, cannot be charged against his share.

Article 59 of the Civil Code contains the following: "The husband is the administrator of the property of the conjugal partnership except when the contrary is stipulated and in the case of article 1384."

Article 1384, treating of parafernalia, is as follows: "The wife shall have the management of the paraphernal property unless she has delivered

the same to her husband before a notary in order that he may administer said property. In such case the husband is obliged to create a mortgage for the value of the personal property he may receive, or to secure said property in the manner established for dowry property."

Article 1408 of the Civil Code contains the following:

"The conjugal partnership shall be liable for:

1. For the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership.

5. The support of the family and the education of the children in common, and of the legitimate children of one of the spouses only."

Article 1413 contains the following: "Besides the powers the husband has as administrator, he may alienate and encumber for a valuable consideration the property of the conjugal partnership without the consent of the wife."

The French Civil Code, Article 1421, says:

"Le mari administre seul les biens de la communaute. Il peut les ventre, aliener et hypothequer sans le concours de la femme."

Translated into English:

"The husband is the sole administrator of the community property. He may sell, alienate and mortgage it without the concours of his wife."

Article 1409 of the same Code Civil says:

"La communaute se compose passivement, * * * 5, des alimments des époux, de l'education et entretien des enfants, et de toute autre charge du mariage."

Translated into English:

The passive or debit of the community is composed: * * * 5th, of the maintenance of the spouses, of the education and maintenance of the children and of all other expenses of the spouses."

It will be seen from these articles that the power of the husband to administer and to spend for the support of the family according to the necessities and according to his judgment is actually unlimited. If he is wealthy he may make any expense he deems proper for himself or for the family as large as it may be.

In the case of Claus Spreckles and wife *v.* Rudolph Spreckles (116 Cal., 339) Justice Temple, delivering the opinion of the Supreme Court of California, among other things, says:

"The marital community was not organized for the purpose of accumulating property, and the husband owes no duty to the community, or to the wife either, to labor or accumulate money, or to save or practice economy to that end. He owes his wife and children suitable maintenance, and if he has sufficient income from his separate estate for that purpose he need not engage in business or so live that there can be community property. If he earns more than is sufficient for such maintenance he violates no legal obligation if he spends the surplus in extravagance or gives it away. The community property may be lost in visionary schemes or in mere whims. Within the law he may live his life, although the community estate is dissipated. Of course I am not speaking of his moral obligations. We derived the system of community estate from the Mexican law, which prevailed here before the acquisition of the territory. The system was unknown to the common law, and it has no better name for the interest of the wife during the marriage than "a mere expectancy." The Mexican jurists spoke of it as a feigned and fictitious ownership or as merely nominal, and it is contrasted with the ownership of the husband.

That is called the actual or true ownership. In Panaud *v.* Jones, 1 Cal., 488, it is said: "The wife," says Febrero (1 Feb. Mej., 225, § 19), "is clothed with the revocable and feigned dominion and possession of one half of the property acquired by her and her husband during the marriage, but after his death it is transferred to her effectively and irrevocably. * * * The husband needs not the dissolution of the marriage to constitute him the real and veritable owner of all the *gananciales*, since even during the marriage he has, in effect, the irrevocable dominion," &c.

In Van Maren *v.* Johnson, 15 Cal., 308, it is said that the estate of the common property is in the husband, and he may dispose of it as he can of his separate estate, the interest of the wife being a mere expectancy. Guice *v.* Lawrence, 2 La. Ann., 226, is cited as as authority. In Packard *v.* Arellanes, 17 Cal., 525, that case is again cited as authority, in which it is said that during the life of the husband the wife cannot say she has gananciales—that is, community property—but the husband during her marriage, is "real y verdadero dueño de todos, y tiene en el efecto de su dominio irrevocable," where, too, the interest of the wife was said to be revocable and fictitious. In Escriche, under "Bienes Gananciales," it is said that the husband owns the community property both nominally and in fact—en habito y en acto—while the wife's ownership is only nominal—en habito—becoming an actual estate upon the dissolution of the marriage. In Ballinger on Community Property the Mexican law is stated as above; the wife had only a feigned or fictitious estate which ripened into a legal estate upon the termination of the marriage; and he adds, referring to the state of things under the former statute of this State, which provided that upon the death of the wife prior to the death of the husband one-half of the community property should go to her heirs, that, since the statute failed

to provide that upon the death of the wife one-half should go to her estate, her intangible interest did not ripen into a legal estate (§ 35). Accordingly it was held in Packard *v.* Arellanes that under such circumstances the interest of the wife could not be administered upon, and that her heirs did not acquire the estate by inheritance from her upon her death before her husband, but took as persons designated by the statute. Speaking of the wife's interest, it is there said: "Such interest constitutes neither a legal nor an equitable estate, as there is, therefore, nothing in it for a court of probate to act upon. If, under the statute, the title of the husband, upon the death of the wife, is divested as to any portion of the property, such title passes directly to the descendants of the wife, and they take it subject to the liability of the property to be absorbed in the payment of debts."

As the law stood prior to the amendment of 1891, I doubt if a happier phrase could have been devised to express the interest of the wife in the community than that used by Judge Field in Van Maren *v.* Johnson, "a mere expectancy." It may be said to be a right—not to property, but as against the community—to take one-half of the residue after payment of debts in case the marriage be dissolved during her life. A somewhat similar state of things exists in France under the Code, and it has been there said that the wife is not "*proprie socia, sed speratur fore.*" She has "*une simple esperance*" to share in such property as may be found at the dissolution of the community undisposed of by the husband" (I. Bourge, Colonial Laws, 368) The system of the community in California, Louisiana and Texas was inherited from Spain or Mexico, and simply continued with such changes as were deemed desirable. It was adopted in Washington, Nevada, Idaho and Arizona."

Ballinger on Community Property, in Section 79, says as follows:

"The law, in establishing between the spouses a *quasi*-partnership as to acquests and gains, recognized the necessity of merging the powers usually incident to both members of a commercial partnership in one of them, so that the business management thereof might be simply, speedily and effectively administered. The husband, being the natural head of the family, is recognized by the law as the proper person in whom should be reposed the management, control and disposition of the community effects for the benefit of the community. He is thus treated as the active partner, or sole business agent, of the marital establishment. Under the Spanish law he was given the exclusive administration of all the ganancail property, and could hypocate or alienate it untrammeled by any authority existing in the wife. The only restriction upon his power of disposition, or even of dissipating it, was that the alienation must not be made maliciously or in fraudulent diminution of the gananeias. The law in making the rights of the wife as to administration passive merely, presupposes the capacity and prudence of the husband and its active agent, and at the same time is designed to preserve domestic harmony. Where the husband, however, is insane or incarcerated for any considerable period, or has abandoned the wife, the reason of the rule which invests him with the active administration of the ganancias ceases, and the wife should in such cases be considered as substituted in his stead as the active partner."

The law of Porto Rico goes so far as to authorize the husband to gamble with the earnings of the marriage community property. Article 1411 of the Civil Code reads as follows:

"What has been lost and paid for during marriage by either of the spouses, in any kind of game

whatsoever, shall not diminish his or her respective share in the partnership."

In Q. Mucius Scaevola Commentaries on the Civil Code we read as follows, translating from the Spanish original:

"As it is necessary that one should manage a partnership, this faculty has been given in the conjugal partnership to the husband. It is so provided first in article 59 of the Code and then with reference to the marriage community profits in article 1412. The husband is not called director, but administrator, because it treats of the management of goods and property. But as his administration cannot be like that of an agent, because among the economical means which are confided to him there are some which are his own and in which he has the imminent power to act as owner, it is necessary to define the limits of the faculties which belong to him. After having exposed this in respect to the dowry and the paraphernalia, the present section will fix the faculties in reference to the marriage community property. We will limit ourselves to anticipate the cardinal points to which the administration of the husband is subject. As a typical point we mention that of not keeping or rendering accounts, with the exception of the time of the dissolution of the marriage, which accounts are certainly not like those of ordinary administrator, as no charges ought to be made against the husband, in any case, of the infinity of small expenses even made at his simple caprice, provided they were of the current and natural order in the administration which any person of average diligence would make" (Mucius Scaevola Commentaries, Volume 22, p. 313).

We quote further from the same Commentaries, Volume 22, pages 319 and 320: "In many articles of these commentaries we have defined what administration means. But we have to add that the administration of the marriage community property

conferred upon the husband is more ample than any administration admitted by the Code, as it begins as before said with the power of direction and resolution of all questions and goes up to that of contracting and making effective in accordance with his own criterium the obligations which he may or ought to satisfy, debiting them to the administration; the husband may rent or not the properties, may cultivate them or not, may borrow money with guarantee if he thinks necessary, may dispose unlimited the expenses of repairs, may invest money in the obligation established in 1408, distributing it more or less amply according to his own designs, and as we saw may even gamble and lose and pay with the profits, having of all that the legal sanction.

As long as he does not forget to decorously maintain the family and to attend to the necessary repairs of the property in the terms established by Article 1408, and as long at he does not alienate the community property or its fruits fraudulently against the interest of the wife, according to the disposition of Article 1413, the powers of the husband are nothing less than absolute. Article 1412 does not say where there is the limit of the power of the husband, in reference to the administration. But the disposition of Article 1413 is general as to administration and to alienation and, its doctrine may be reduced to one general principle; the husband may do everything that he pleases, alieniating, incumbering and simply managing the community property and its profits, as long as his acts are not inspired by the intent to defraud his wife."

After what we have shown to be the law correctly interpreted, we may say that the conclusions of the Court below in the case at bar and the decree thereunder are greatly erroneous, as the following observations will show: While explaining why the property did not have a great increase during the marriage on account of his long yeared sickness, and inability therefore to attend to it, defendant Garrozi,

the husband of the complainant, in his testimony said that during the sixteen years of his married life with the complainant from 1886 to 1902, he was obliged on account of his sickness, which at times was very grave, and while he was in danger of dying, to make several trips to Europe, some of which trips have lasted many months and some even years, being all the time under the care of physicians and nurses, and traveling from place to place according to the directions of his physician. There was no other testimony offered or given, neither to prove or disprove or contradict this testimony. Taking this testimony as a basis, the Master and the Court make the following observations (see Report of Special Master, finding numbered 24):

"That said defendant, Garrozi, made several trips to Europe during the continuance of his marital partnership and spent large sums of money by reason thereof, which were, as near as can be determined from his testimony, the following amounts: In 1899, $10,000; in 1890, $7,000; 1895, $5,000; in 1896-98, $25,000; total, $47,000. Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness.

But said testimony is not substantiated by that of any other credible witness, while, if true, it could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the Master is forced to the conclusion, either that said defendant has exaggerated the amounts expended, or that such extravagant expenditures were not either necessary or reasonable, and hence not a proper charge against the property of the marital partnership. It seems that twenty-five thousand dollars would have been a liberal expenditure under the circumstances for a

man in defendant Garrozi's condition of life, and the Master therefore concludes that twenty-two thousand dollars of the amount be charged against the separate property of defendant Garrozi" (Record, p. 83).

Further, the Master and the Court make the following conclusion of law (Record, p. 84):

"That in the case at bar the complainant having brought no assets to the marital partnership, and the defendant Garrozi having brought property to the value of seventy-one thousand five hundred dollars, and the total assets of the partnership at the date of its dissolution having been found to be $77,000, there would remain as the profits of said partnership the sum of $5,500, of which the complainant would be entitled to one-half or $2,750; but the defendant Garrozi having, as herein found, wrongfully deprived the partnership of the sum of $22,000, the complainant will be also entitled to recover from the defendant Garrozi one-half of the amount, or $11,000, making a total of $13,750, to which the complainant is entitled" (Record, p. 84).

The Court below confirmed the Master's report and made this conclusion of law its own, saying that twenty-two thousand dollars should be charged against the husband on account of the above mentioned legitimate expenses for trips to Europe, physicians and other expenses made in order to cure himself by Garrozi during the eighteen years of his married life with the complainant; and therefore the Court added to the $2,750, found as the amount of profits of the marriage copartnership corresponding to the share of the complainant (Record, p. 84), other $11,000, that is to say, half of the above mentioned $22,000, and gives the wife instead of the $2,750 found by the Court as her share of the marriage community profits, the amount of $13,750.

The reasoning of the Court below is evidently fallacious. We should logically reason as follows: If the husband's testimony is true, then there is nothing to charge against him, as he legitimately spent the whole sum of $47,000 in curing himself from long and grave illness. In case this testimony is not true, then he did not spend that amount and therefore no such amount was ever taken from the marriage community partnership property, and therefore there is nothing to charge against him either. This one is the logical conclusion and not the conclusion of the Court below.

SIXTH POINT.

At the liquidation of the marriage community partnership only an aliquot share of the property may be adjudged to each of the spouses, but no money judgment can be given in favor of one against the other.

Article 1428 of the Civil Code provides as follows: "With regard to making the inventory, rules for the appraisal and sale of the property belonging to the conjugal partnership, guarantee and security for the respective doweries, and all other particulars, not expressly fixed in this chapter, the prescriptions of Section 5th, Title 3d, Book 3d, and Sections 2d and 3d, Chapter 3d of these titles shall be observed."

Among the prescriptions of the sections referred to and mentioned in the article just quoted we find the following articles:

Article 1367. The real property of the unappraised dowery shall be restored in the condition in which it may be; and should it have been alienated, the proceeds of the sale shall be delivered, deducting

what may have been applied to the payment of the exclusive obligations of the wife.

Article 1030. If for the payment of credits and legacies the sale of the hereditary estate should be necessary, it shall take place in the manner established by the law of Civil Procedure with regard to intestate and testamentary proceedings, unless all the heirs, creditors and legatees come to a different agreement.

There is no provision neither in the articles quoted nor in any of the sections referred to in Article 1428, which would authorize a money judgment against the husband. The property is to be divided in proportionate shares, and only in case that for the payment of credits and legacies the sale of the estate should be necessary, then a sale may take place and the money realized may then be divided in the proportionate shares between the spouses.

The reason is obvious. If a money judgment be given to one of the spouses before the conversion of the property in money, then it may result that the other spouse may not be able to realize by the sale of the whole property the amount adjudged to be paid. No such injustice could be contemplated by any code of laws. The decree of the lower Court for a specified sum of money is therefore erroneous.

The French Code Civil in Article 1476 says as follows:

" Au surplus, le partage de la communaute, pour tout ce que concerne ses formes, la licitation des immeubles quand il y a lieu, les effets de partage, la garntie qui en resulte, et les soults est soumis a toutes les regles qui son etablies au titre des successions pour les partages entre coheritiers."

Translated into English:

" Besides, the division of the community property, so far as concerns its forms, the auction sale of the real estate in case such should take place,

execution of the division, the guaranty resulting thereby, and the payments, is subject to all the rules which are established in the Title of SUCCESSIONS for the division between coheirs."

Article 826 on division of SUCCESSIONS says:

2. CHACUN DES COHERITIERS PEUT DEMANDER SA PART EN NATURE des meubles et immeubles de la succession: neanmoins, s'il y a descreanciers saisissants ou opposants, ou si la majorite des coheritiers juge la vente necessaire pour l' acquit des dettes et charges de la succession, les meubles son vendu publiquement en la forme ordinaire.

Translated into English:

" Each one of the heirs may demand his part in kind, personal or real estate of the succession: nevertheless, in case there are creditors attaching or opposing, or in case the majority of the heirs consider the sale necessary for the payment of debts or charges as against the estate, the personal estate may be sold at public auction in the ordinary form."

SEVENTH POINT.

Counsel fee and suit money cannot be given in a suit for liquidation of her share of property by a divorced wife after divorce; and in the courts of the United States counsel fee can never exceed the sum of twenty dollars.

Ballinger on Community Property, Section 119, note, says:

That no charge can be made against the community property " for fees of counsel employed by

the wife to prosecute a suit for divorce and partition of community property" (citing Tucker *v.* Corlin, 14 An., 734).

In Section 215 of the same book we read as follows:

"It was held in Drais *v.* Hogan, 50 Cal., 121, that a married woman could not bind herself by a contract to pay an attorney for procuring a divorce and a division of the community property. Whether the services rendered by an attorney for a married woman in procuring a divorce and securing her a first division of the common property, may be enforced in a court of equity as a lien on her share of the common personal property or her separate personal estate, provided the services were rendered on the face of her personal separate estate, was suggested but not decided in Terry *v.* Hammond, 47 Cal., 32. There is no provision of law authorizing the Court to require the husband to pay, subsequent to the divorce and out of his separate property, any sum toward the maintenance of the former wife, when the divorce was for her offense."

The United States Revised Statutes, Section 823, expressly provide that twenty dollars as an attorney's fee, and no other compensation shall be given to the party prevailing. This section has been construed as a restriction upon the United States courts in order to make the costs in all United States courts uniform.

Says Justice Webb, in Celluloid Manuf'g Co. *v.* Chandler, 25 Fed. Rep., 9: "This Act of February 26, 1853, substituted, in all the Federal Courts, for the State practice, its own provisions. Before its passage, the costs, though made to conform to the allowance for the same items in the courts of the respective States, were distinctly taxed and allowed in favor of parties obtaining judgment. Act 1793, Ch. 20, § 4. That to secure this uniform rule, was the object of the statute is plain, and there is no reason

to conclude there was a further purpose to change the party in whose favor the allowance was made."

Mr. Justice Nelson, in Troy Iron & Nail Factory *v.* Erastus Corning, 7 Blatch., 16, says: "The section goes on to say, 'Fees of attorneys, solicitors and proctors. In a trial before a jury in civil and criminal causes, or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars.' This is the highest compensation allowed to the solicitor in a cause; and it can be allowed but once. Dedekam *v.* Vose (Cases Nos. 3730, 3731)."

Goodyear *v.* Sawyer, 17 Fed., 13.
Williams *v.* Morrison, 32 Fed., 683.
Cleaver *v.* Traders' Insurance Company, 40 Fed , 864.
Parks *v.* Booth, 102 U. S., 96.

Even in State courts when alimony or counsel fee or suit money are given, it is only in cases when the complainant is still the wife of the defendant, but in no case such counsel fee or suit money is given after the divorce in a suit for her share of property. There is no statute in Porto Rico authorizing anything of this kind, and no such local statute could override the express provision of the law of Congress as far as the United States courts are concerned.

In the case at bar it can be seen from the record that the judgment of the District Court of Ponce denying the divorce prayed by the husband, Garrozi, and granting alimony and suit money to the wife, who is the complainant in this case, was reversed by the Supreme Court of Porto Rico, which Court granted the divorce to the husband Garrozi from the complainant in this case. It follows that the alimony, suit money and costs which were given to the wife in the lower local Court, that is to say, the District Court of Ponce, now, after the judgment of said District Court has been reversed

by the Supreme Court of Porto Rico, cannot be collected at all, and certainly not in these proceedings for the liquidation of the marriage community. Besides, the decree of the lower Court, that is to say, the United States District Court for Porto Rico, finding that the profits of the marriage community, after deducting all charges, were $5,500, is conclusive, and the Court cannot after decree entered, without showing error in computation, afterwards give to the complainant more as suit money.

The Court below therefore erred in adding to the decree the sum of $598, with $133.50 interest thereon as suit money given by the Ponce local Court and also $885 alimony given by that lower Court, the judgment of which was reversed by the Supreme Court of Porto Rico. The lower Court also erred in giving the complainant in the case at bar a counsel fee exceeding the statutory twenty dollars docket fee, to wit, the sum of $1,500.

In the case of Barber *v.* Barber, 21 Howard, 582, it was held that although alimony given by a divorce court may be sued for in a court of the United States, no such Federal court has jurisdiction to grant any alimony, suit money or counsel fee.

EIGHTH POINT.

Fraud will never be presumed, and the fact that the husband two years before the divorce and long before the divorce proceedings have been commenced by him has sold property to the value of seventy-seven thousand dollars while the share of his wife amounts to the paltry sum of twenty-seven hundred and fifty dol-

lars cannot warrant a conclusion that the sales were fraudulently made in order to deprive the wife of her share.

From the findings of fact by the Court below it can be seen that the property transferred by the husband Garrozi to the other defendants amounts in value to the sum of $77,000 (Record, p. 84).

It can also be seen that the marriage community property profits amounted to $5,500 (Record, p. 84), and that the wife's share amounts to the sum of $2,750 (Record, p. 84). Now it is inconceivable that a sane man should transfer such a big amount of property in order to avoid the payment of a paltry sum, which at the time of the transfers he was not even in expectation ever to owe to his wife.

It is almost unnecessary to repeat well-known maxims of equity: "Fraus est odiosa et non praesumenda." "Odiosa et inhonesta non sunt in lege praesumenda."

Hager *v.* Thompson, 1 Black (66 U. S.), p. 80.
Clarke *v.* Hackett, 1 Black (66 U. S.), p. 77.
Collins *v.* Thompson, 22 How., 245.
Connor *v.* Featherstone, 12 Wheaton, 199.
Garner *v.* Nichols, 9 How., 356.

It is a rule of law that subsequent creditors cannot have any right to set aside previously made transfers of property, because this would upset all business transactions. It is only allowed in exceptional cases when it is shown that when the conveyances were made, the grantor was insolvent and continues so, or is very deeply in debt. A small indebtedness will not suffice. The proportion of the debt to the value of the conveyances will be considered, and only in a case of clear and un-

doubted fraud upon creditors may previous sales be allowed to be attacked by subsequent creditors.

Graham *v.* La Crosse & M. R. R. Co., 102 U. S., 148.
Moore *v.* Page, 11 U. S., 117.
Schreyer *v.* Scott, 134 U. S., 405.
Sexton *v.* Wheaton, 8 Wheaton, 229.
Mattingly *v.* Nye, 8 Wall., 370.
Hinde *v.* Langworth, 11 Wheaton, 199.
Kehr *v.* Smith, 20 Wall., 31.
Smith *v.* Vodges, 92 U. S., 183.
Jones *v.* Clifton, 101 U. S., 225.
Clark *v.* Killian, 103 U. S., 260.
Horbach *v.* Hill, 112 U. S., 144.

In the case at bar there is no proof that the defendant Garrozi was insolvent at the time his conveyances were made. The subsequently accruing debt of some temporary alimony incidental to subsequent divorce proceeding instituted by himself, not against him, is immensely small and insignificant as to allow any doubt or suspicion of fraud, the conveyances being made for valuable considerations, against which no evidence was offered by the complainant.

NINTH POINT.

The findings of fact by the Court below are based on hearsay testimony and on opinion of witnesses who have not qualified as experts on the value of agricultural estates, to appraise which it requires certain knowledge and experience, while at the same time material and competent testimony offered by the defendants was wrongfully excluded by the Court.

The errors in the rulings of the Court below on the evidence are exceedingly numerous. They are in-

cluded in the assignment of errors from No. 12 to No. 31, and from No. 36 to No. 39 inclusive. The exceptions taken by the defendants to these rulings of the Court are on record in the bill of exceptions and speak for themselves (Record, pp. 114 to 123).

It will require only a slight examination of those rulings on the testimony for this Court without any argument to perceive the errors committed by the Court below in that respect. It will then become manifest that the findings of fact of that Court want any and all basis in the evidence, and could not stand the scrutiny of this Court.

We will consider the errors in the rulings of the Court below upon the evidence under four different heads: first, permitting hearsay testimony; second, permitting testimony of facts too remote from the issues; third, permitting witnesses who did not qualify as experts to testify as to their opinion on the matters in issue; and, fourth, refusing competent testimony offered by the defendants.

(*A.*)

THE COURT BELOW HAS PERMITTED WITNESSES TO GIVE HEARSAY TESTIMONY AGAINST THE OBJECTION OF THE DEFENDANTS.

On the cross-examination by defendant's counsel of complainant's witness Juan Macini Pietri (Record, p. 114) the following question was asked: "So then it was not by judging the amount of the crop that you gave the value, and it was not by the extent of the land? Your estimate, then, was based simply on what other people said?" in order to show that the witness' testimony was only hearsay. The objection of complainant's counsel to this question was sustained by the Court, to which ruling the defendants excepted.

Afterwards the same witness had given the following answer to defendant's questions: Q. "You have testified something about the planta-

tions 'Luisa' and 'Leonor.' What do you know about those farms?" Ans. "I have testified that the plantation 'Luisa' produces a yearly average of 500 quintals, and the plantation 'Lenor' about 300 quintals." Q. "How do you know that? Have you been managing these plantations?" Ans. "I know it by what is said." Q. "That is all you know about it?" Ans. "Yes" (Record, p. 114). The motion of defendants to strike all the testimony of this witness referring to the plantations "Leonor" and "Luisa" as being simply hearsay was overruled, to which ruling the defendants excepted. Now the above named plantations "Luisa" and "Leonor" form the chief and principal part of the property in issue, and the value of them, which had to serve as a basis for the calculations of the liquidation of the marriage community property, was ascertained by the Court by such hearsay testimony as the above quoted.

(*B.*)

THE COURT BELOW ALLOWED WITNESSES, WHO HAVE NOT QUALIFIED AS EXPERTS, TO GIVE THEIR OPINIONS AS TO THE VALUE OF AGRICULTURAL PROPERTY, WHICH REQUIRES SPECIAL AND EXPERT KNOWLEDGE.

On the direct-examination of complainant's witness, Jorge Massenden, the following question was asked by complainant's counsel (Record, p. 114): "What was the value of the plantation 'Juanita' before he was married in 1886?" Defendants objected on the ground that the witness had not qualified as an expert, as is shown by the questions given to the witness before that question. The Court overruled the objection.

The testimony of the witness was as follows: Q. What is your name? Ans. Jorge Massenden. Q. How long have you lived in Yauco? Ans. For thirty odd years. Q. How long have you known Garrozi? Ans. From the year 1882. Q. Did you

know him before that time? Ans. No. Q. What was his occupation in 1882? Ans. He was in the "Juanita." Q. Was that his property? Ans. At that time it was his property. Q. What other property did he have in Yauco in the year 1882? Ans. In 1882 I knew only this property, and in 1883 I knew Mr. Garrozi had a house in Rosario street, Yauco. Q. Besides that house, what other property did he have in 1883? Ans. I do not know what other property he had. Q. Did he have any other? Ans. In a few years he bought a store. Q. In what year was that? Ans. I cannot state accurately. Q. What property did he have in 1886, before he married? Ans. Those three only. Q. What was his house worth at that time? Ans. At that time it might have been worth about $1,500. Q. You mean in the current money of Porto Rico? Ans. No, in gold. Q. What was the value of the house in current money at that time? Ans. $200 pesos Mexican. Q. What was the value at that time of the other property he had in Yauco? Ans. It had a value of $600 pesos before the second story was built, in the same Mexican currency. Q. When was the second story built? Ans. After the year 1886. Q. After his marriage? Ans. Yes. Q. What was the value of the plantation "Juanita" before he was married in 1886? Defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted.

Ans. This plantation "Juanita" had a positive value of $25,000 pesos cash (Record, p. 114).

The same witness was asked by complainant's counsel: "How wealthy is he (meaning Garrozi today)?" Defendants objected to this question as being incompetent, and calling for an opinion only. The Court overruled the objection, to which ruling the defendants excepted. A motion to strike out the answer to the foregoing question, which was as follows: "He must have at least $150,000," on the ground that it was an opinion of the witness, was

overruled, to which ruling the defendants excepted (Record, p. 115).

The complainant's witness, Gustavo Nin, was asked as follows on his direct-examination by the complainant (Record, p. 116): Q. What is your name? Ans. Gustavo Nin. Q. Where do you live? Ans. In Yauco. Q. How long have you lived there? Ans. I was born there. Q. Do you know Tomás Garrozi? Ans. Yes. Q. How long have you known him? Ans. Since he came to Porto Rico. Q. Do you know his father? Ans. I knew him when I was a boy. Q. Have you had any business with Garrozi? Ans. Yes. Q. Before his marriage? Ans. No, but afterwards. Q. Before his marriage what property did he have? Ans. A coffee plantation, a wooden house in Yauco and two masonry houses there. Q. What plantation was that? Ans. The "Juanita," the one belonging to Pintado now. Q. What was this plantation worth before his marriage?

Defendants objected on the ground that the witness had not qualified as an expert. The objection was overruled by the Court, to which ruling the defendants excepted.

Ans. About $20,000.

The same witness was asked the following question: "You base your calculation on the price you heard Mr. Pintado paid for it, do you"? Ans. Yes. He gave it to Pintado in liquidation for $45,000.

The defendant's motion to strike out this witness' testimony as to valuation was overruled, to which ruling the defendants excepted.

The testimony of the complainant's witness Manuel Catalá Dueño (Record, p. 118) was as follows: Q. What is your name? Ans. Manuel Catalá Dueño. Q. What is your occupation? Ans. Judicial agent. Q. Do you live in Yauco? Ans. Yes, for twenty-one years. Q. When did you move to Yauco? Ans. In the year 1881. Q. Do you know Garrozi? Ans. Yes. Q. Since when? Ans. Since my arrival in Yauco. Q. Do you know his prop-

erty interests and business? Ans. Yes. Q. Have you been his agent on different occasions? Ans. I acted as his agent on one occasion. I was employed by him to take some accounts at his house. Q. As such agent and by reason of such employment have you had opportunity to know his financial standing and become familiar with his interests? Ans. To a great extent. Q. When was Mr. Garozzi married, do you remember? Ans. In the month of May, 1886. Q. Before that time what part did you take in his property interest? Ans. I took no interest in his property interests, but as a protocol clerk of the notary at Yauco I intervened in the documents executed by him at Yauco. Q. And you had opportunity to see the title deeds that he had before his marriage? Ans. Yes. Q. What properties did he have before his marriage?

Mr. Boerman: I object, as the question calls for an answer that is not the best evidence and is simply hearsay. There are writings in existence showing these properties.

Ans. He owned an estate in the barrio of Aguas Blancas.

Q. What was that estate?

Ans. It was a coffee hacienda called "Juanita," which he had turned over to Isidoro Pintado to have it liquidated, and after being liquidated for the price put upon it, the property then belonged to both of them.

Q. Did you see the title deeds to that property?

Ans. I have seen them many times, and I have had opportunities of taking copies from it and drawing instruments in regard to the same matter. He had besides a house; I do not remember the name of the street; besides that he had a masonry house and another wooden house next to the first one where they had a cock-pit; he had besides a mortgage credit on the estate "Restaurado" belonging to Juan Antonio Negrón for the amount of 10,000 pesos or more.

Q. Did you see the title deeds to these properties?

Mr. Boerman: I object to it as hearsay and secondary and not the best evidence.

Q. Have you had in your hand and had occasion to read the title deed to these properties?

Mr. Boerman: I object to this class of evidence, as it is incompetent, is purely hearsay and secondary.

Ans. I had an opportunity of seeing the titles referring to the plantation "Juanita," and of the house of masonry in Rosario street, and the title of the mortgage on the plantation "Restaurado," but as to the others, I have not seen them.

Q. As to what you have not seen?

Ans. The house where the cock-pit was, and Mr. Garrozi had besides two masonry houses in Borinquen street, masonry buildings, on one of which a second story was added.

Q. In what notarial office were you in Yauco?

Ans. In the only one then existing, that of Don Juan Zacharaias Rodriguez.

Q. Were there any more title deeds in that office of properties of Mr. Garrozi?

Ans. I do not know. According to the time I was there, there were no more.

Q. What time were you there?

Ans. From 1881 to 1884 and 1885.

Q. If there had been any other title deeds would you have seen them?

Ans. Yes.

Q. What was the value of the plantation "Juanita" from the year 1881 to 1885?

Ans. The plantation "Juanita" in the year 1881 had a value of 40,000 pesos, because this was the value they agreed upon when the transaction of the partnership was made.

Q. Was that a cash value or time payments?

Ans. It was not a cash value as it was agreed upon as the price to be paid in a certain number of years.

It was what was due on it.

Q. In how many years? Ans. In ten years.

Q. What was the value of the plantation "Juanita" in cash at that time?

Ans. In my judgment from 20 to 25,000 pesos.

Q. Why? Ans. For the reason that its value had to be paid in a number of years. The sale was by installments.

Q. What was the value of the cock-pit?

Ans. The cock-pit may have been worth from 6 to 800 pesos.

Q. How do you know it?

Ans. Because, if I remember rightly, Mr. Garrozi sold the house at this price to Mr. Antonio Franceschi.

Q. What was the value of the two other masonry houses?

Ans. From four to five thousand pesos.

Q. How do you know it?

Ans. This was the assessment for the collection of the taxes, and it was made at this price, because later on when Mr. Garrozi transferred these houses to Maria Gonzalez, one of them had been reconstructed, making a two-story house of it, and he did it for the sum of six thousand pesos.

Q. What was the value of the other property he had?

Ans. The house located in the street whose name I do not remember, was worth six hundred pesos. (Record, p. 120).

Q. What was the value of the plantation "Juanita" from the year 1881 to 1885?

Defendants objected on the ground that the witness did not qualify as an expert. The Court overruled the objection to which ruling the defendants excepted (Record, p. 117).

Ans. The plantation "Juanita" in the year 1881 had a value of 14,000 pesos because this was the value they agreed upon when the transaction of the partnership was made.

Q. What was the value of the plantation "Juanita" in cash at that time?

Defendants objected on the ground that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted (Record, p. 117).

Ans. In my judgment from twenty to twenty-five thousand pesos.

Q. What was the value of the cock-pit?

Defendants objected that the witness had not qualified as an expert. The Court overruled the objection, to which ruling the defendants excepted.

Ans. The cock-pit may have been worth from six to eight hundred pesos.

Q. What was the value of the other wooden house that he had?

Same objection and ruling. Exception.

Ans. Twenty-five hundred pesos (Record, p. 117).

Q. What was the value of the two other masonry houses?

Same objection and ruling. Exception.

Ans. From four to five thousand pesos.

Q. What was the value of the other property he had?

Same objection and ruling. Exception.

Ans. The house located in the street whose name I do not remember was worth six hundred pesos.

Q. How much money in cash?

Ans. As proceeding from the "Juanita" he should have $28,000.

Defendant moved to strike out the answer as being an opinion of the witness, which motion was overruled and the defendants excepted (Record, p. 120).

Witness Francisco Negroni Lucas was asked by complainant the following question (Record, p. 121):

"Q. Has Tomas Garrozi increased his wealth since his marriage in 1886?"

Defendants objected on the ground that it calls for an opinion. The Court overruled the objection, to which ruling the defendants excepted.

"Ans. Yes, after his marriage he increased it."

It can be easily seen from the testimony quoted, which was admitted by the Court against the objection of the defendants, that all of it was based simply upon opinions of the witnesses, and as valuation of agricultural land requires certain knowledge and expert opinions of witnesses who had not qualified as experts in any way whatever should not have been admitted. The importance and vitality of such alleged testimony can be seen upon consideration that the marriage community property had to be first correctly valued, before it could be found whether there are any profits belonging to it, which could be distributed between the spouses, and before we could determine if there is anything at all coming to the complainant as her share of such profits.

(*C.*)

THE COURT BELOW HAD ALLOWED TESTIMONY OF THE VALUE OF THE MARRIAGE COMMUNITY PROPERTY AT TIMES TOO REMOTE EITHER FROM THE YEAR OF THE MARRIAGE OR FROM THE YEAR OF THE DIVORCE.

AS THE OBJECT OF THE LIQUIDATION OF THE MARRIAGE COMMUNITY IS TO DETERMINE WHETHER THERE ARE ANY PROFITS OR INCREASE OF THE PROPERTY CONTRIBUTED BY THE SPOUSES TO THE MARRIAGE COMMUNITY, THE VALUES OF THE PROPERTY MUST BE TAKEN OF THE DAY OF THE MARRIAGE AND OF THE DAY OF THE DIVORCE.

Witness Juan Macini Pietri was asked the following question by complainant's counsel: "What

is the value of the plantation "Luisa" and "Hortencia" to-day (1904)?

Defendants objected on the ground that it is too remote in time, the divorce having been granted in 1902, and liquidation, under the law, must be made as of the date of the divorce. The Court overruled the objection, to which the defendants excepted (Record, p. 114).

It has been uniformly held by the Supreme Court of Spain that the beginning and the end of the period of the marriage community, which must be taken as the basis for liquidation, are the day of the marriage and the day of the divorce, and no other subsequent dates can be taken into consideration, although the liquidation itself takes place at a period much later than the date of the divorce.

Sentence of the 4th of March, 1867, Jurisprudencia Civil, Vol. 15, page 229.

Sentence of the 21st of February, 1885, Jurisprudencia Civil, Vol. 57, page 267.

Sentence of the 11th of February, 1891, Jurisprudencia Civil, Vol. 69, page 217.

(*I.*)

THE COURT BELOW REFUSED TO ADMIT COMPETENT AND RELEVANT TESTIMONY OF WITNESSES FOR THE DEFENDANT.

The witness Francisco Paoli on behalf of the defendants was asked the following questions by defendant's counsel (Record, p. 122):

Q. "Were you present in the year 1886 at any such inventory" (referring to inventory made at the time of the marriage)? Ans. "Yes." Q. "Do you remember his marriage?" Ans. "Yes." Q. "Was that before or after his marriage?" Ans. "Yes."

Q. "Before or after?" Ans. "Before." Q. "Was it in the beginning of the year?" Ans. "I cannot state exactly whether it was in the beginning of April or of May." Q. "How did you come to be present at that inventory?" Ans. "I had the necessity of going to see Garrozi in order to obtain some money from him, and when I reached the house I found that he was busy in making this inventory with Mr. Luis García, of his properties." Q. "Did you take any part in the making of that inventory?" Ans. "They asked me to take a seat, and I saw that they were making an account in regard to some money." Q. "Did you see what amount of money it was?" Ans. I saw that they counted and put down on a paper 80,000 and some odd dollars, in gold money it was." Q. Did you see that money?" Ans. "Yes." "What did you do then?" Ans. "I was standing there waiting until they finished with that business and then they referred to other properties, such as mortgages, up to the amount of 200,000 pesos, and as I saw it was getting late and that they were busy I retired." Complainant objected to this testimony and made a motion to strike it as hearsay. Said motion was sustained by the Court, to which ruling the defendants excepted.

On cross-examination the same witness was asked by complainant the following question: Q. "Did you count the money?" Ans. "No, sir; Luis García counted it. They were counting it on the table, and when they had finished counting it they made a note of it, and it amounted to 80,000 pesos." Complainant moved to strike this answer, and the Court sustained the motion, to which ruling the defendants excepted.

The same witness was asked the following question on cross examination: Q. "So what you know about that amount is what you have heard Garrozi say about it, is it?" Ans. "Yes, and I also saw the money on the table, and as they counted it I heard them, and they stated the amounts until they

reached the sum of 80,000 pesos, and it was in gold money." Complainant moved to strike this answer, and the Court sustained the motion, to which ruling the defendant's excepted (Rec., p. 123).

Complainant moved to strike the testimony of this witness, and the Court sustained the motion except as to persons present, to which ruling the defendants excepted (Record, p. 123).

The same witness was asked the following questions by complainant: Q. "Did you see the whole inventory?" Ans. "I saw when the inventory amounted to some 200,000 pesos, and then I retired." Q. "How did you know it was for that sum?" Ans. "Because I heard them saying '80,000 dollars in gold,' 90,000 dollars in property'; various mortgages and other credits." The complainant moved to strike this testimony, and the Court sustained the objection, to which ruling the defendant's excepted (Record, p. 123).

As the object of the liquidation of the marriage community property is to determine if there are any profits to be divided among the spouses after paying back to each one of them his or her part brought in at the marriage, and after paying all the debts resting on such community property, it is very important and relevant to the issues to know exactly what amount of property each one of them has contributed, such property being either real or personal, including money. The testimony offered by the complainant as to his capital in cash at the time of the marriage ought not to have been excluded. The counting of the money in the presence of the witness, accompanied by the announcement of the amount, is competent testimony, the announcement of the amounts by the counters being *res gestæ*. The Court therefore erred in ruling out this testimony.

TENTH POINT.

The decree of the Court below in this case and the supplemental order thereto should be reversed.

Respectfully submitted,

CHARLES M. BOERMAN,
Of Counsel for the Defendants.

FILE COPY.

Supreme Court of the United States,

OCTOBER TERM, 1906.

Office Supreme Court,
FILED.
OCT 30 1906
JAMES H. McKENN

No. 72.

TOMAS GARROZI, JUANA MARIA GONZALEZ AND DOMINGO PIAZZI,

Appellants,

vs.

JUANA DASTAS,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

ADDITIONAL BRIEF ON BEHALF OF APPELLANTS ON QUESTION OF JURISDICTION OF THE COURT BELOW.

FRITZ v. BRIESEN,
Of Counsel for Appellants.

EVENING POST JOB PRINTING OFFICE, NEW YORK.

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 72.

THOMAS GARROZI, JUANA MARIA GONZALEZ and DOMINGO PIAZZI,
Appellants,

vs.

JUANA DASTAS,
Appellee.

Appeal from the District Court of the United States for the District of Porto Rico.

ADDITIONAL BRIEF ON BEHALF OF APPELLANTS ON QUESTION OF JURISDICTION OF THE COURT BELOW.

This additional brief is intended to consider the question of the jurisdiction of the court below more fully than it has been considered in the main brief.

For the convenience of the Court a chronological table of the main facts and pleadings is here given:

CHRONOLOGICAL TABLE.

May 12, 1886.—Marriage of Thomas Garrozi and Juana D. Dastas. No special marriage contract (Rec., p. 1).

Nov. 28, 1898.—Separation in fact of spouses, without judicial intervention (Rec., p. 104).

May 21, 1901.—Thomas Garrozi files suit for divorce against Juana Dastas, in District Court of Ponce (Rec., p. 5).

July 15, 1901.—District Court of Ponce awards Juana Dastas $75 a month alimony and $598 counsel fees (Rec., p. 93).

Oct. 4, 1901.—Juana Dastas files bill in District Court of Ponce against Thomas Garrozi, Domingo Piazzi and Juana Maria Gonzales, alleging the facts above stated regarding the marriage, separation in fact, beginning of divorce suit, and order for alimony and counsel fees, and alleging further:

> That at the time she left her husband he was possessed of certain property, consisting of real estate and mortgage credits (Rec., pp. 1-2).
>
> That at various times he disposed of all his property in defraud of creditors, for no consideration, some to the defendant Juana Maria Gonzales, and some to the defendant Domingo Piazzi (Rec., pp. 2-4).

That he is now insolvent (Rec., p. 5). The relief prayed for is the nullification or, *ad cautelam*, the rescission of the deeds and transfers of Thomas Garrozi's property (Rec. p. 7) and the payment of the expenses of this suit (Rec., p. 8).

Jan. 15, 1902.—Garrozi files petition for removal to United States District Court for Porto Rico, alleging that he is a citizen of France, and that therefore his wife, the complainant, is also a citizen of France.

Feb. 26, 1902.—The defendants file their answer in the United States District Court, admitting the allegation relative to the property, but denying that the transfers were without consideration and in fraud of creditors, and alleging that the property referred to in the bill was bought by Garrozi with money owned by him before his marriage, or with money received by him for property owned by him before his marriage (Rec., pp. 15–16).

March 12, 1902.—Defendant Juana Maria Gonzales files her petition for removal in the District Court of Ponce, alleging that the complainant is a citizen of France, and the petitioner a citizen of Porto Rico (Rec., p. 20).

March 12, 1902.—Defendant Domingo Piazzi files his petition for removal in the District Court of Ponce, alleging that the complainant is a citizen of France and the petitioner a citizen of France and resident of Corsica (Rec., p. 21).

March 15, 1902.—Motion to remand is made by complainant, on ground that the petition for removal fails to aver that the defendant Garrozi is a non-resident. This motion is denied, on the ground that the petition states that the defendant, Garrozi is a citizen of France hence an alien, and hence, presumably, a non-resident (Rec., p. 19).

April 7, 1902.—Complainant files, in the United States District Court, a "Reformed Bill of Complaint," setting up substantially the same facts set up in the original bill in the Insular Court, but adding a statement to the effect that the suit for divorce was decided in favor of complainant, and is now pending and undecided on appeal in the Supreme Court of Porto Rico; and adding a new cause of action, praying that "your orator may be decreed to be owner of one-half the aforesaid properties and mortgages" (Rec., pp. 23–27). A new defendant, Quintin Ramirez, is added, but he is

afterwards dropped from the case by stipulation (Rec., p. 60).

May 12, 1902.—Answer to "Reformed Bill of Complaint" filed (Rec., p. 30).

June 9, 1902.—Supreme Court of Porto Rico reverses decision in divorce suit, and grants absolute divorce to Garrozi for his wife's adultery (Rec., p. 108).

May 1, 1904.—Complainant moves to amend bill by setting forth the granting of absolute divorce, and praying for the appointment of a Master to take an account of the community property (Rec., pp. 36-37). This motion is granted (Rec., p. 41).

April 11, 1904.—Defendants amend answer by alleging that the divorce was granted for the adultery of the complainant (Rec., pp. 42-43).

Oct. 3, 1904.—Special Master is appointed to report findings of law and fact (Rec., pp. 50-51), testimony, taken before a Special Examiner, having already been filed September 26, 1904 (Rec., p. 47).

Oct. 18, 1904.—Complainant files motion to amend the bill (Rec., p. 51). This motion is referred to the Special Master (Rec., p. 55), who renders his report (Rec., p. 56). The amendments are allowed (Rec., p. 59), and on

Oct. 29, 1904.—Complainant accordingly files her amended bill of complaint (Rec., p. 60), in which certain transfers of the property are set up, either not known to the complainant at the time of the filing of the original bill, or occurring after the filing of such bill (see "Motion for leave to withdraw application and to amend" (Rec., p. 58). In this bill particular reference is made to "*the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazzi and Juana Maria Gonzales to defraud your oratrix*" (see Amendment IX., Rec., p. 54; also Amended Bill, Rec., p. 63, beginning of paragraphs one, three and four).

Nov. 3, 1904.—Defendants file plea, alleging that under the law of Porto Rico the complainant, being the guilty party in the divorce action, has no right to sue for a portion of the community property (Rec., p. 68). An answer is filed the same day, denying fraud and collusion (Rec., p. 69).

Nov. 14, 1904.—The plea is withdrawn, but allowed to stand as a part of the answer (Rec., p. 75).

April 8, 1905.—The Special Master submits finding of fact and law (Rec., p. 78). Exceptions are filed by both sides (Rec., pp. 85, 86), but these are overruled (Rec., p. 89).

April 19, 1905.—Final decree entered (Rec., p. 89). The Court finds that there is due to the complainant, as her share of the partnership property, the sum of $13,750. It finds that the transfers of the property are fraudulent and void and orders them canceled. It gives judgment for the sum of $13,750, and also for $500, fee of Special Master, and also for $400, fee of Special Examiner.

April 20, 1905.—Order entered, ordering defendant Garrozi to pay the alimony and counsel fees awarded by the District Court of Ponce in the divorce litigation, and also counsel fees, $1,500, for services of complainant's attorney in the present case.

On November 7, 1904, the Court had appointed a receiver to take charge of all the property referred to in the complaint (Rec., p. 128). After the appeal bond for $25,000 had been filed the defendants moved for a discharge of the Receiver on the ground that the appeal bond was a sufficient security for the complainant (Rec., p. 130). This motion was denied (Rec., p. 131), and a receiver is still in charge of the property.

A finding of facts by the Court is printed at page 108 *et seq.* of the record. In finding 24 (Rec., p. 112) the Court states that $47,000, spent by the de-

fendant Garozzi, during four trips to Europe, between 1889 and 1898, one visit apparently lasting two years, was an excessive amount. It finds that $22,000 should be charged against the separate estate of the defendant Garozzi. One-half of this amount, or $11,000, is added to one-half the sum of $5,500, or $2,750, found by the Special Master to be the value of the community property (Rec., p. 84), and the total, $13,750, constitutes the amount of the judgment.

ARGUMENT.

The following points will be argued in this brief:

I.—This Court has jurisdiction of this case on appeal.

II.—The United States District Court for Porto Rico had no jurisdiction to hear, try or determine this case.

III.—The United States District Court for Porto Rico had no jurisdiction to render a decree relating to the separation of the community property.

POINT 1.

This Court has jurisdiction of this case on appeal.

The amount of the judgment is more than $5,000 (Rec., pp. 91–93). In *Royal Insurance Company* vs. *Martin*, 192 U. S., 149, 161, it was held that this Court has jurisdiction in appeals and writs of errors coming from Porto Rico "in every case, without regard to the sum or value in dispute, where the Constitution of the United States or a treaty thereof or any Act of Congress is brought in question and

the right claimed thereunder is denied, *and in every other case where the sum or value in dispute exceeds $5,000 exclusive of costs.*"

POINT 2.

The United States District Court for Porto Rico had no jurisdiction to hear, try, or determine this case.

The suit was not originally begun in the United States District Court, but was brought into that court by removal from the District Court of Ponce (Rec., p. 1).

In order that the United States District Court should have had jurisdiction in this case, it was necessary to show not merely that the Court might have had jurisdiction if the action had been begun by its own process, but that the law authorized the removal of the case.

Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, page 159:

> "The fact that a federal Circuit Court may have original jurisdiction of a case is not sufficient to justify a removal. The right of removal is wholly statutory and cannot be exercised unless by virtue of some provision in an act of Congress."

Same, page 366:

> "An act of Congress (1875; 18 Stat., 472, Sec. 5,) requires the Circuit Court to remand or dismiss a suit removed from a State court whenever it shall appear that the court has no jurisdiction thereof, or that parties have been collusively joined for the purpose of removal. *There is a lack of jurisdiction.* within the meaning of the statute, whenever the record fails to show a ground for removal,

> or when it is made to appear that none exists, or when the proceeding is not of such a nature as to be removable on any ground."

Black's Dillon Removal of Causes, § 13:

> "The intention of the Removal Act of 1887 to restrict removals of cases from state courts to federal courts, and to limit the jurisdiction of the latter courts in such cases is perfectly plain."

Same, § 220:

> "If the question is not as to any mere defect or informality in the proceedings, but goes to the substantive right of removal (in otner words, the jurisdiction of the Federal Court), the rule is altogether different. Such objections cannot be waived by a party, nor can his consent confer on the federal court a jurisdiction which it would not otherwise possess."

To the same effect is the decision in *Martin* vs. *Snyder*, 148 U. S., 663.

By Sec. 34 of the Foraker Act (Act of April 12, 1900, Ch. 191, 31 Stat. L., 77, 84) it is provided that:

> "The laws of the United States relating to appeals, writs of error and certiorari, *removal of causes*, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States [for Porto Rico] and the courts of Porto Rico."

The same section confers upon the United States District Court for Porto Rico all the powers of a circuit court as well as of a district court.

The law which confers jurisdiction upon the United States Circuit Court by removal from a State court is found in Section 2 of the Act of March 3, 1875, Ch. 137, as amended by Act of March 3,

1887, Ch. 373, Sec. 1, and Act. of August 13, 1888, Ch. 866, Sec. 1 (see *Federal Statutes Annotated*, Vol. 4, p. 312, Tit. "Judiciary"). So much thereof as is pertinent to the present controversy is here given:

> "That any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the circuit courts of the United States are given original jurisdiction by the preceding section, which may now be pending, or which may hereafter be brought, in any State court, may be removed by the defendant or defendants therein to the Circuit Court of the United States for the proper district. *Any other suit of a civil nature, at law or in equity, of which the circuit courts of the United States are given jurisdiction by the preceding section, and which are now pending, or which may hereafter be brought, in any State court may be removed into the Circuit Court of the United States for the proper district, by the defendant or defendants therein, being non-residents of that State.* And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district." * * *

By the "preceding section" referred to in the statute just quoted, it is provided (Act of March 3, 1875, Ch. 137, 18 Stat. L., 470, Sec. 1, Federal Statutes Anotated, Vol. IV., p. 65):

> "That the Circuit Court of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum

> or value of two thousand dollars, and arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same State claiming land under grants of different States, or a controversy between citizens of a State and foreign States, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid." * * *

The present suit does not fall within the first sentence of Section 2, above quoted, of the Removal Act, as it does not arise under the Constitution, a law of the United States, or a treaty. It follows, therefore, that, in order that the Court below could have had jurisdiction upon removal, two factors must be present:

1. It must be a suit of which the circuit courts "are given jurisdiction by the preceding section."
2. The defendants must be non-residents (provided there be no separable controversy).

It may suffice to say that the defendants are not all of them non-residents. The defendant Juana Maria Gonzales is alleged in the original bill to be a resident of Yauco [Porto Rico] (Rec., p. 1). In her petition for removal she alleges that she is a citizen of Porto Rico (Rec., p. 21).

> Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, p. 275:
>
> "It has been held that unless all the defendants are non-residents of the State in which the suit is brought, it is not removable by any of them, although all are citizens of different States from the plaintiff.

It has often been held that all the defendants must be non-residents in order to remove.

Parkinson *v.* Barr, 105 Fed. Rep., 81–83, and cases there cited.

It follows that the present suit could not properly have been removed unless there was a separable controversy.

While in the original bill it is alleged that the property mentioned under rubrics A and B of Part 2 was transferred to the defendant Juana Maria Gonzales (Rec., p. 2) and the property mentioned under C, D, E and F of Part 2, was transferred to the defendant Domingo Piazzi, the essence of the action is the alleged fraud and conspiracy of the defendants in transferring or accepting all of Garozzi's property (worth $150,000, Rec., p. 4, fol. 7. 6), in order to make it impossible for his wife to collect a judgment of less than $1,000 (Rec., p. 5, fol. The transfer of any one of the parcels could not have been fraudulent. It was the stripping himself bare of all property that can alone form a basis for the charge of fraud.

The inseparable nature of the controversy is conclusively shown by the allegations in the "Amended Bill of Complaint," Rec., p. 63:

> "*And your oratrix avers that, in pursuance of the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazzi and Juana Maria Gonzalez, to defend your oratrix,*" &c. This statement appears three times on page 63.

Even if it had been a separable controversy, the suit would not have been removable, as the same could only have been separated into a suit between Juana Dastas as complainant, and Garozzi and Piazzi as co-defendants, and a suit between Juana Dastas as complainant, and Garozzi and Juana Maria Gonzales as co-defendants. In either case the plaintiff would have been an alien (Rec., pp. 14, 21, 22), and the defendant Garozzi would have been

an alien, and the suit would not have been "between citizens of different States," the only kind of suit which is removable because of separate controversy (Sec. 2 of Act of 1875, above quoted p. 9).

It has already been stated (Brief, p. 10) that it is not sufficient to authorize removal, that all the defendants be non-residents, but the suit must also be such in which jurisdiction has been given by Section 1 of the Removal Act. Now, Section 1 of the Romoval Act would not give the Court jurisdiction in a case like the present, which is between a citizen of France on the one side and two citizens of France and a citizen of Porto Rico on the other.

Original jurisdiction has been given to the United States District Court for Porto Rico to hear and determine such a case by an act later than the Foraker Act.

> Act of March 2, 1901, Ch. 812; 31 Stat. L., 953, Sec. 3:
>
> > "That the jurisdiction of the District Court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

While, therefore, the Court below might have had jurisdiction of this suit if it had originally been brought therein, it had no jurisdiction on removal. Such a construction of the Act of 1891 cannot be presumed as it is not warranted by the express words of the statute or by necessary implication.

> Am. & Eng. Encyl. of Law, Vol. 26, Tit. "Statutes," p. 615; note:
>
> > "Nor will a construction be adopted which enlarges the jurisdiction of courts in the ab-

sence of express words or necessary implication."

Ex parte Story, 3 Q. B. D., 166.
Kite's Case, 1 B. & C., 107."

It follows that the United States District Court for Porto Rico had no jurisdiction to determine this suit, and that the suit should be remanded to the District Court for Ponce.

The fact that the defendants-appellants themselves removed the case to the United States District Court did not give that court jurisdiction.

Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, p. 369:

> "It is immaterial who makes a motion to remand. * * * When it is based upon a strictly jurisdictional defect the cause must be remanded though the motion be made by the petitioner for removal."

Same, page 375:

> "There are some objections that are waived if not taken by a motion to remand. But where the objection is jurisdictional, and cannot be waived, it is the duty of the Court to take notice thereof and remand the cause of its own motion, and the Circuit Court of Appeals or the Supreme Court on appeal or error after final decree or judgment, will reverse the same and order the cause to be remanded, though no objection be taken in the court below or in the appellate court."

Martin *vs.* Snyder, 148 U. S., 663:

> "Under the Act of Congress of March 3, 1887, 24 Stat. L., 552, Ch. 373, it is the defendant or defendants who are non-residents of the State in which the action is pending who may remove the same into the Circuit Court of the United States for the proper district. The defendants here were not entitled to such removal, and the decree, which was in favor

of complainants and from which the defendants prosecuted this appeal, must be reversed for want of jurisdiction, with costs against the appellants, and the case remanded to the Circuit Court with direction to render a judgment against them for costs in that Court, and to remand the case to the State Court."

POINT 3.

The United States District Court for Porto Rico had no jurisdiction to render a decree relating to the separation of the community property.

The decree, in Section I. (Rec., p. 60), sets forth:

> "The Court finds, orders and decrees that there is due to complainant Juana Dastas, by defendant Thomas Garozzi y Pietri, from and by reason of the conjugal society or partnership existing between the said complainant and the said defendant Thomas Garozzi, during the existence of the marriage between them since the twelfth of May, 1886, until the date of the divorce between them on the ninth of June, 1902, the sum of thirteen thousand seven hundred and fifty dollars ($13,750) which said sum is a charge and lien against the properties and mortgages hereinafter described."

In other words, the Court, upon the petition of Juana Dastas, the wife, declared a separation of the community property to which, it was alleged, she was entitled by reason of her marriage with the defendant Garrozi.

Under the Spanish law all such property as has been acquired by husband and wife during their marriage, by their labor or industry, or by pur-

chase, is termed community (*ganancial*) property, and is deemed the joint property of the spouses.

Ballinger on Community Property, § 5, "Spanish Community or Ganancial System," gives a full statement of the Spanish law relating to community or ganancial property. On page 25 he says:

> "Escriche comprehensively defines *ganancial* property to be whatever the husband and wife acquire during the marriage, and while living together, by a joint lucrative or onerous title, or that which the husband and wife or either of them, during the marriage or while living together acquire by purchase or by means of their labor or industry; as also the fruits of their separate property which each brings to the marriage; and of that which either acquires for himself by any lucrative title, whilst the conjugal society subsists. It is the common property of the husband and wife, and belongs the half to each of them, although the husband has more separate property than the wife or the wife more than the husband, although one, after marriage, acquires more than the other, and although it may be one alone who by commerce or toil accumulates the property."

The law in Porto Rico is the same. See for instance the following sections of the Civil Code in force in Cuba, Porto Rico and the Philippines, War Department translation:

> ART. 1392: By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.
>
> ART. 1401: To the conjugal partnership belong:
>
> 1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property,

whether the acquisition is made for the partnership or for one of the spouses only.

2. That obtained by the industry, salaries, or work of the spouses or of either of them.

3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

The husband has the exclusive administration or the community property, and may hypothecate or alienate it as he chooses (but not with malice of fraud). The wife's interest "seems to be a *mere expectancy* during coverture" (Ballinger, § 5, p. 29).

In the present case the Court found the following fact:

> 2. "The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Supreme Court of Porto Rico on the ninth day of June, 1902, for complainant's adultery" (Rec., p. 108).

Under the older law the guilty wife was not entitled to recover her share of the community property:

> "The wife forfeits her matrimonial gains when she has been guilty of adultery."
>
> Ballinger, Community Property, § 5, p. 20.

See also,

> Schmidt, Civil Law of Spain and Mexico, Art. 68, citing Partid. l. 15, T. 17, P. 7.

Under the Civil Code the harshness of this older law is somewhat mitigated, but the guilty wife is

not permitted to sue for her share of the community property, the husband retaining his right to the administration of such property, and even of the wife's separate property (see Civil Code, Articles 73 and 1435).

The dissolution of the marriage partnership, and the separation of the community property are particularly provided for in Articles 1417 to 1444 of the Civil Code:

> "ART. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void. * * *
>
> "The conjugal partnership shall also terminate in the cases mentioned in Article 1433."
>
> "ART. 1433. The husband and the wife may request the separation of the property, and it shall be decreed, whenever the *spouse of the plaintiff* should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or *should have given cause for divorce.*"

The "dissolution of the marriage," referred to in Article 1417, is a dissolution arising from the death, or from the official declaration of the presumption of the death, of one of the parties (Art. 52: Marriage is *dissolved* by the death of one of the spouses. Art. 104: Divorce *only* produces the suspension of the life in common of the spouses). Thus, in the words of *Manresa, Codigo Civil Española*, Vol. IX., p. 674, Art. 1417, the conjugal partnership expires only after the happening of one of the following facts:

1. Death of one of the spouses.
2. Declaration of presumption of death.
3. Nullification of the marriage.
4. Requesting and obtaining the separation based upon

(*a.*) Civil interdiction of one of the spouses;

(*b.*) Declaration of absence;

(*c.*) Decree of divorce.

Facts 1, 2, 3, 4*a* and 4*b* are not present in this case.

We shall show that fact 4*c*, "requesting and obtaining the separation based upon decree of divorce," is not present.

Article 1433, insofar as it bears on divorce, reads as follows:

> "The husband and the wife may request the separation of the property, and it shall be decreed, *whenever the spouse of the plaintiff should have * * * given cause for divorce.*"

That is to say *only the innocent spouse may petition for the separation of property;* and separation of the partnership and liquidation of the property may take place only after a judicial decree to that effect has been rendered upon such petition:

> "ART. 1432. In the absence of a specific declaration in the marriage contract, the separation of the property of the spouses, during the marriage, shall not take place except by virtue of a judicial decree, except in the case prescribed by Article 50."

[In this case there was no "specific declaration," Rec., p. 1. 108; and the provisions of Article 50 do not apply.]

Manresa, Codigo Civil Español, Vol. IX., p. 769, says, in discussing this point:

> "(*B.*) Procedure: Now then, neither the civil interdiction, nor declaration of absence, nor the decree of divorce produce, by themselves, the separation of goods of the marriage. The law awaits, before everything, the wish of the innocent or present spouses, and concedes

them this right, so that they may, of their own free will, make use of it or not, petitioning for it or not doing so; but, in every case, there still must be a solemn declaration by the Court of the authority, publicity and necessary justice of so important and transcendent a fact, in order that there shall be produced the extraordinary effect of such a determination.

"*The desire of the present or innocent spouse, by itself, is therefore ineffective; the will or decree of the tribunals by itself is not effective*, no matter how grave the acts or causes which may give a motive to such a separation. *The interested party must petition for it and the Courts must decree it.*"

It is absolutely clear that no Court can, under the laws of Porto Rico, declare the separation of property, even after a divorce has been granted, *except upon the petition of the innocent spouse.* Without such petition the Court would be without jurisdiction to declare the separation of property, and its acts, looking to such separation, would be void.

As by Sec. 7 of the Foraker Act (Chap. 191, Laws of 1900, 31 Stat. L., pp. 77–79), it is provided "that the laws and ordinances of Porto Rico now in force shall continue in full force and effect," &c.; these Code provisions are binding upon the United States District Court for Porto Rico.

The United States District Court for Porto Rico can therefore take jurisdiction of a suit insofar as the same involves the separation of community property only when the plaintiff alleges and proves that the marriage has been annulled, or that the other spouse is dead, or legally presumed to be dead, or has been condemned to a penalty which includes civil interdiction, or has been declared an absentee, or has given ground for divorce. Not only was not one of these jurisdictional facts proven in this case,

but, on the contrary, it was found that the plaintiff gave the ground for divorce.

The Court below was therefore without jurisdiction to declare a separation of the community property, and its judgment for $13,750 is therefore void.

If it should be argued that the entire question relating to the separation of the community property must be settled by the law of France, as the spouses are French citizens, we would reply that the French law has not been proven in this case.

Respectfully submitted,

FRITZ V. BRIESEN,
Of Counsel for Appellants.

NEW YORK, October 29, 1906.

FILE COPY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Office Supreme Court, U. S.
FILED.
OCT 31 1906
JAMES H. McKENNEY,
CLERK.

No. 72.

TOMAS GARROZI, JUANA MARIA GONZALES, AND DOMINGO PIAZZA, APPELLANTS,

vs.

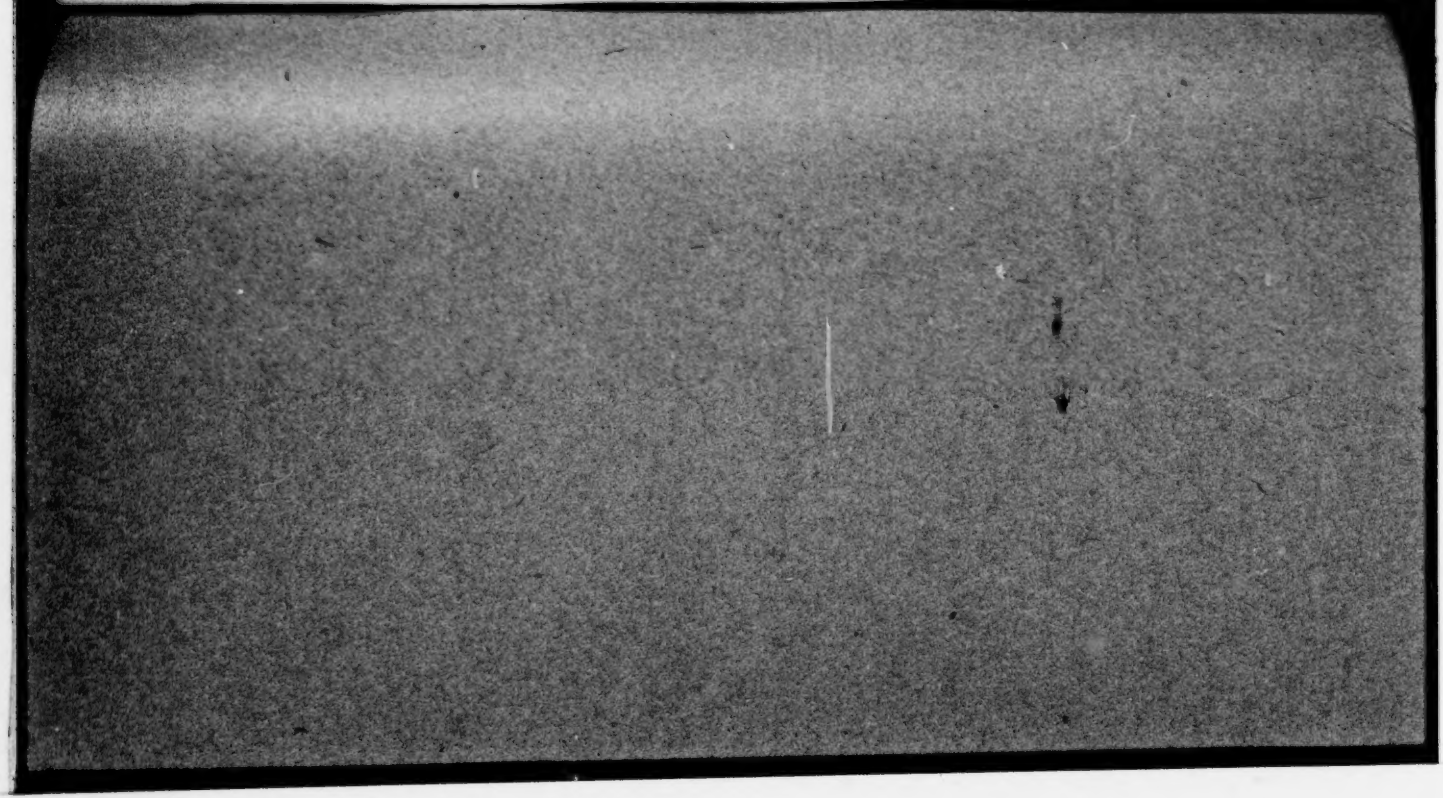
JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR APPELLEE.

FRANCIS H. DEXTER,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Appellee.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23365



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 72.

TOMAS GARROZI, JUANA MARIA GONZALES, AND DOMINGO PIAZZA, APPELLANTS,

vs.

JUANA DASTAS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

BRIEF FOR APPELLEE.

Preliminary Statement.

Juana Dastas, formerly the wife of appellant Tomas Garrozi, on October 7, 1901, instituted this suit in the District Court of Ponce, Porto Rico, an insular court, against said Garrozi and the remaining appellants for the nullification or rescission of certain contracts of purchase and sale of real estate and mortgage credits. In her statement of the case she asserted that she had contracted a canonical marriage with Garrozi at Yauco, in Porto Rico, on the 12th day of May, 1886, without prior stipulations as to the conditions of the marriage union, and that the spouses lived together until November 28, 1898, when, on account of marital in-

felicities, they became separated in fact without judicial intervention.

That at the time of the separation the spouses possessed certain real properties acquired during the nuptial union, the titles to which were registered in the name of the husband. That in December, 1899, the husband, Garrozi, "began to prepare certain data" for the purpose of bringing a criminal suit on the ground of adultery against the appellee Dastas, and at the same time he transferred, through public instruments, certain of said real estate holdings to his natural sister, Juana Maria Gonzalez, one of the defendants and appellants, "in order to save himself the responsibility which might arise against him from taking such steps." Said criminal suit was instituted in the District Court of Ponce, January 12, 1900, and resulted in a verdict on February 17, 1900, in favor of the accused wife.

That subsequently, through other public instruments, said Garrozi transferred to his uncle Domingo Piazza, the remaining appellant here, other mortgage credits and real titles specified in complainant's statement of case. That, notwithstanding such alienations for professed valuable considerations, the appellant Garrozi continued in the possession, administration, and enjoyment of the property alleged to have been sold, and in order to cover his tracks he obtained from each of the apparent purchasers general powers of attorney which appear in public instruments.

That neither Juana Gonzalez nor Domingo Piazza, who figure as purchasers of said properties, paid the price of such purchases, nor was either of them possessed of any means of subsistence or of any funds or resources other than such as they received from the defendant Garrozi. Said Gonzalez and Piazza were and are insolvent, and the said contracts of purchase and sale were false and simulated.

That on the 21st of May, 1900, Garrozi also in the District Court of Ponce instituted an action for divorce against Dastas on the ground of adultery, and such proceedings were still pending at the time the suit here at bar was com-

menced, although at such date there had been awarded by said District Court to said Dastas certain alimony and legal expenses, none of which had been paid, and, by reason of the transfers above referred to, no property could be found in the name of said Garrozi to satisfy the sums so awarded, wherefore the oratrix prayed the annulment or rescission of the contracts mentioned, and, after referring to pertinent articles of the civil code, asserted her interest in the properties described therein "under the rule of marriage profits," and prayed that she be granted as against Garrozi, as administrator of the marriage union, expense money necessary for the carrying on of the suit (1-8).

Notification to defendant Garrozi of this suit was issued, and the act of conciliation between husband and wife having failed (9), service of notification was "given" to each of the defendants and summons ordered to issue (10).

On January 11, 1902, the defendants appeared by their attorney, Charles M. Boerman, Esquire, and filed a petition for the removal of the cause to the District Court of the United States for the District of Porto Rico, and by order dated January 13, 1902, the cause was removed as prayed (12).

Separate petitions for removal were filed in the name and on behalf of each of the three defendants, appellants here.

In his petition for removal Garrozi asserted that the action then pending in the Insular Court for the District of Porto Rico was within the jurisdictional cognizance of the District Court of the United States, and that the matter in dispute exceeded the sum or value of ten thousand dollars; that Juana Dastas was, "through her marriage, of the nationality of her husband, a citizen of France," and that he (Garrozi), "at the time of the commencement of said suit, has been and still continues to be a citizen of France," and that by reason "of the premises" petitioner is entitled to have said suit re-

moved to the said United States District Court for Porto Rico" (14).

By order of the last-mentioned court this petition was amended by inserting the words "and resident" after the words "a citizen" and before the words "of France," so as to read that petitioner Garrozi, at the time of the commencement of said suit, "has been and still continues to be a citizen *and resident* of France" (18).

The separate petition of defendant Juana Maria Gonzales asserts "that said suit contains controversies which are wholly between the complainant (Dastas), a citizen of France, and your petitioner, who is a citizen of Porto Rico, which can be fully determined between them," and "that the citizenship of the parties is now *as* (and) *has been* (was) at the commencement of this suit as has been stated" (21).

The separate petition of defendant Domingo Piazza asserts that the suit is between "the plaintiff, a French citizen, and the defendants, of whom the petitioner is a citizen of France and a resident of Corsica, France, and has been such at the commencement of the suit as well as now" (22).

The foregoing petitions and various original papers pertaining to the suit having been certified by the presiding judge of the Insular District Court to the United States District Court, and the former court having "inhibited itself from taking any cognizance of said suit in favor of the" latter court (20), the solicitor for the complainant Dastas moved to remand the cause, which motion was opposed by the solicitor for defendants, and was overruled by the court (19).

Thereafter a reformed bill of complaint, which was subsequently amended in various particulars, was filed by Dastas, who now averred that a decree of divorce had been passed in the suit between Garrozi and herself on June 9, 1902. Various pleas and answers of the defendants were filed to the amended bills of complaints, and, the evidence on each side

having been concluded, reference was made to a special master, who in due season filed his report containing findings of fact and law (78). Exceptions to such findings having been overruled, said report was confirmed and a final decree was entered which, among other things, directed a recovery by Dastas against Garrozi "from and by reason of the conjugal society or partnership" of the sum of $13,750.00, said sum being also made a charge and lien against the properties and mortgages thereinafter described. It was also found and decreed that the various transfers and attempted sales complained of in complainant's bill of complaint were "fraudulent, simulated, and void as against complainant," and were made for the purpose "of defrauding complainant in her just demands," and the same were decreed to be "cancelled, set aside, and for naught held," and the properties covered thereby were decreed to be burdened with a lien to the extent of the amounts awarded in favor of complainant Dastas and the special allowances and costs of suit (89-92).

From this decree defendants prayed an appeal to this court (95), and gave an approved supersedeas bond in the sum of $25,000 (105).

SPECIFIC STATEMENT OF AMENDED CASE AND FACTS FOUND.

As finally reformed and amended in the United States District Court for Porto Rico, the bill of complaint took form as follows:

Juana Dastas, claiming to be a citizen of the Republic of France, sued the three defendants above named, all of whom were alleged to be citizens of the Republic of France, residing in the municipality of Yauco, Porto Rico, for the matters hereafter set forth.

Complainant Dastas alleged that on May 12, 1886, with-

out any antenuptial agreement as to the dower and conjugal or community property then had, or which they might thereafter accumulate, she had contracted matrimony with the defendant Garrozi, and sustained the marriage relation with him until November 28, 1898, when they separated; that on June 9, 1902, a decree of divorce was entered dissolving the bonds of matrimony between them, and that on said date complainant was entitled to a one-half interest in certain community property (*bienes gananciales*) particularly described; that on August 9, 1900, the defendant Garrozi "fraudulently and without consideration, and for the purpose of defeating complainant of her rights therein, assigned and transferred" certain mortgage credits, part of said community property, to the defendant Domingo Piazza for a simulated consideration, and said Piazza having brought about the foreclosure of the mortgage subsequently, fraudulently, and in collusion with said Garrozi and the defendant Juana Maria Gonzales, transferred the property covered thereby to said Juana Maria Gonzales, said transfer being wholly without consideration, and as between the parties was for the use and benefit of the defendant Garrozi.

That on December 6, 1899, said Garrozi, as administrator of said community property, fraudulently conveyed and transferred by public instrument, for a simulated consideration, certain other of said community properties, describing them, to said Juana Maria Gonzales; and again, by other notarial or public instruments and by collusive and fraudulent judicial proceedings, said Garrozi, still as administrator of said community property, without consideration and fraudulently transferred other described parcels of said community properties to said defendants Gonzales and Piazza; that each and all of such sales, transfers, and assignments were fraudulent and void, and were in fraud of complainant's rights in said community property; that, apart from said properties and credits, said Garrozi had no means wherewith to settle with complainant for her said interests therein, or to pay to her the alimony *pendente lite* and cer-

tain allowances which had been decreed to her in the course of the divorce proceeding by the District Court of Ponce; and that said false and fraudulent sales, transfers, cessions, and assignments were made for the express purpose of depriving complainant of her lawful rights in said properties and credits, and to avoid the payment of said alimony and allowances.

Wherefore complainant prayed that "said sales, transfers, cessions, and assignments of the aforesaid properties and mortgages be set aside, annulled, and held for naught, and that defendants be required to surrender up the same to be cancelled," and that they be enjoined from claiming any estate, right, title or interest therein, and that "an account be taken of all the foregoing properties and assets, and all other property in which complainant may have an interest; and that a master be appointed to make such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof which correspond to your oratrix," and that the court should "decree a partition and division thereof in the proportion of one-half" to complainant, and should decree her right therein as aforesaid, and for "such further or other relief as the nature of the case may require" (60-65).

To this reformed and amended bill of complaint the three defendants filed a joint and several plea in bar, averring that "on the 9th day of June, 1902, a decree of divorce was granted to the defendant Tomas Garrozi, from and against the complainant Juana Dastas, for cause of adultery on her part," and that therefore she has no claim whatever upon any marriage partnership property or any property in the hands of the defendant at the time of the divorce, under the law of Porto Rico" (65).

By consent of counsel for both parties this plea was referred by the court to a special master "to hear and determine the same, and to report thereon at his earliest con-

venience to the court," and said master subsequently reported "that said plea is insufficient as a defense to said bill, and the same is hereby overruled" (66).

The solicitor for defendants filed an exception to this report of the master, but before the same was brought to the attention of the court (67) he filed a further joint and several plea to the reformed bill of complaint, averring that "under the law of Porto Rico the complainant has no right to ask for the delivery to her of any of the property of the conjugal society, even if there be any, because the complainant has been divorced from the defendant Tomas Garrozi on the statutory ground of adultery on her part, and that, under the law of Porto Rico, her husband, the said defendant, Tomas Garrozi, is to remain the administrator of all property belonging to the wife, even of her separate property, if there be any" (68).

On the same day said solicitor for defendants filed their joint and several answers to the reformed bill of complaint, admitting the marriage of Garrozi to Dastas on May 12, 1886, as averred, and also the divorce on or about June 9, 1902, and alleged that as "such divorce was granted to defendant Tomas Garrozi on the statutory ground of adultery on the part of the complainant," therefore "neither upon said date of the divorce, or at any time thereafter, has complainant been entitled to a one-half interest, or to any interest in any property belonging to the defendant Garrozi, and specifically denied that complainant had any right, title or interest in the properties described in her bill of complaint (69), asserting that at the time of entering into the marriage relation said complainant did not possess nor bring in any marriage property whatever, nor had she after marriage acquired any property, either by gift, donation, purchase or earnings of any kind," and that there never was any marriage community property in existence, upon which complainant had any claim whatever, and, further, that at

the time of the divorce the property possessed by said Tomas Garrozi was in value less than the property which he had brought into the marriage, and "that there was no income or increase whatever which could have formed a part of a community property" (70).

Defendants denied fraudulent intent, combination or collusion in connection with the sales, transfers, cessions, and assignments complained of, and asserted that the titles to certain of said properties had been acquired by the defendant Juana Maria Gonzalez "for a valuable consideration during the years 1899 and 1900, and that others of those mentioned" belong to and had been acquired by said defendant Piazza during said years, and that all of said transactions were in good faith and for a valuable consideration (70).

It was also averred that the sales by Garrozi of said properties to both Gonzales and Piazza were made before any alimony *pendente lite* was granted to complainant by the District Court of Ponce and before any costs were given to her in said suit, and that there was therefore no credit whatever in her favor at the time of such conveyances which could have been prejudiced thereby, and that said complainant Dastas had no share or interest whatever in any of said properties at the time of such transfers or sales (71).

The solicitor for complainant moved on various appropriate grounds to strike defendants' pleas and amended answer from the files (73), and the pending motions having been brought to the attention of the court, "all of the foregoing motions, exceptions, and pleadings" were referred to the special master "to take such action thereupon as may be proper in accordance with equity and the practice thereof" (74).

Said matters having come on for hearing before said special master in accordance with the terms of the reference, defendants, with consent of complainant's solicitor, withdraw their plea filed November 3, 1904 (68), as a plea, and

pray that same may be allowed to stand as part of their answer, and it is so ordered, and complainant's motion to strike defendants' answer from the files was denied, and the special master so reported to the court (75).

This report of the special master was confirmed by the court, as was also the former report of said special master overruling defendants' plea first filed (65, 66), and thereupon, by leave of the court complainant filed the general replication, and the cause, being thus at issue, was by the court referred to the special master to be proceeded in "with as much diligence as possible" (76), and to report to the court findings of fact and conclusions of law upon the testimony submitted in behalf of the parties" (78).

The special master having on April 8, 1905, filed his report containing both findings of fact and conclusions of law (78-85), and the exceptions of both complainant and defendants thereto (85, 86) having been overruled by the court, said report of the special master was approved (89), and it was by the court adjudged and decreed that there is due to complainant Dastas from defendant Garrozi, "by reason of the conjugal society or partnership existing between" them during the existence of their marriage from May 12, 1886, to June 9, 1902, the date of the divorce, the sum of $13,750.00, which sum is a lien upon the properties described in the decree; that the transfers and attempted sales of the properties described in the decree are fraudulent, simulated, and void as against the complainant, and were made for the purpose of defrauding her in her just demands; that said properties and mortgage credits now really belong to the defendant Garrozi, subject to the payment to complainant of said sum of $13,750.00 and such other costs and expenses as may be allowed by the court; that all of said conveyances and assignments be and are hereby cancelled, set aside, and for naught held, and said defendant Garrozi is declared to be the true owner thereof, subject to complainant's rights therein, and that said sum of $13,750.00, with

interest at 6 per centum from July 9, 1902, together with the sum of certain specified allowances to the special master and the special examiner, amounting in all to $900.00, and costs of suit be paid by said defendant Garrozi, for which sums complainant is awarded execution (89-92).

Subsequently, on motion of complainant a supplemental order or decree was entered by the court whereby the defendant Garrozi was further ordered to pay to complainant and her solicitor the amounts awarded to her in the course of the divorce proceedings by the District Court of Ponce, for costs and alimony, with interest, and $1,500.00 counsel fees, on account of legal services rendered in this cause (93).

The errors assigned by appellees in support of their appeal are fifty-six (56) in number, and will be found at pages 95 to 104, inclusive, of the printed transcript of the record.

The United States District Court for Porto Rico, as required by the United States statutes governing appeals from that court (sec. 35, Act April 12, 1900), made a statement of facts and announced conclusions of law and certain rulings on the admission or rejection of evidence and exceptions thereto, which will be found *in extenso* at pages 108 to 123, inclusive, of the transcript of record. The facts found by the court, which are of particular consequence on this appeal, are the following:

Findings 1 and 2. The facts as to the marriage and divorce of Dastas and Garrozi, as set forth in the bill of complaint and the answer thereto (108).

Findings 3 and 4. That at the time of her marriage Dastas was about fifteen years old; had been a servant in the house of Garrozi, and brought no property whatever to the marital partnership; that Garrozi, who was then 46 years old and was the owner of the various properties referred to in the bill of complaint (109).

Findings 5 to 21 concerned matters of administration of the community property during the continuance of the conjugal partnership, and particularly the pretended sales and transfers of the real properties and mortgage credits complained of in the bill of complaint (109-112); and, in so far as the defendants Gonzales and Piazza were concerned, said sales and transfers were found to have been made without consideration and fraudulently, for the purpose of defrauding complainant of her interest therein (112).

Finding 26. That the total amount or value of the assets brought by defendant Garrozi to the marital partnership was $71,500.00; and (Finding 27) that at the time of the dissolution of said marital partnership said Garrozi was possessed of property of the value of $77,000.00.

Finding 24. That during the continuance of the marital partnership defendant made several trips to Europe, and spent by reason thereof $47,000; that defendant's claim that these trips and the consequent expenditure of such large sums of money were made necessary by reason of his serious and continued illness, was not substantiated by other credible witnesses; that defendant either exaggerated the amounts expended or that such expenditures were neither necessary or reasonable, and hence not a proper charge against the property of the marital partnership, and that the sum of $25,000 would have been a liberal expenditure under the circumstances for a man in Garrozi's condition of life, and that therefore $22,000 of the total charge of $47,000 should be charged against Garrozi's separate property (113).

The difference of $5,500 under finding 26, and $22,000 under finding 24, composing a total of $27,500, constituted the "profits" of the conjugal partnership, one-half of which, viz., $13,750, formed the principal item which was decreed to be paid by Garrozi to complainant Dastas.

JURISDICTION.

It has not been suggested that the District Court of Ponce, Porto Rico, whence this cause was removed into the United States District Court for the District of Porto Rico, did not have original jurisdiction of the controversy. In view of the fact that at least three out of the four persons, parties to the cause, are admittedly citizens of the Republic of France, can it be doubted that the United States District Court for the District of Porto Rico also had original jurisdiction of the controversy concurrent with the Insular District Court?

Act of March 2, 1901, sec. 3, 31 Stats. L., 953.

Ortega *vs.* Lara, 202 U. S., 339, 344.

As the amount of the judgment appealed from, exclusive of interest and costs, exceeds $5,000, it is certain that this Court has jurisdiction to entertain this appeal.

Act of March 3, 1885, 23 Stats. L., 443, ch. 355, sec. 1.

Act of April 12, 1900, 31 Stats. L., 85, ch. 191, sec. 35.

Royal Ins. Co. *vs.* Martin, 192 U. S., 150.

If, then, no objection was taken in the trial court to any supposed want of jurisdiction on the part of that court to entertain the cause by reason either of its subject-matter or the character of the parties or for irregularities in procedure, it would seem that it would be too late to take such objection in this court for the first time.

It is quite true, as argued on the brief for appellants (pp. 15-18), that on every writ of error or appeal pending before this honorable tribunal

> "the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even

> when not otherwise suggested and without respect to the relation of the parties to it" (Mansfield, &c., Ry. Co. *vs.* Swan, 111 U. S., 379).

And so, in cases of which the inferior Federal Courts may take cognizance only by reason of the citizenship of the parties, this court of its own motion, or at the suggestion of counsel if seasonably made, will dismiss the writ of error or appeal where the record does not affirmatively show jurisdiction in the court below, for in such cases this court can have no jurisdiction of the cause except to reverse the judgment or decree of the lower court on that ground.

> Jackson *vs.* Ashton, 8 Peters, 148.
> Bors *vs.* Preston, 111 U. S., 407.

But both the *rationale* and the practice is otherwise where, as here, the jurisdiction of both the lower court and of this court on appeal is beyond doubt on the score of both subject-matter and parties, and criticism is solely directed to a supposed irregularity in the method of procedure occurring either in the invocation of the judicial power or in the course of the trial of the cause.

In such cases this court will not reverse unless timely objection thereto was taken by the party improperly affected thereby, and in none of such cases will a reversal ensue where it appears that the party complaining of the irregularity himself brought it about.

The present case was removed from the Insular Court, which had jurisdiction over it, to the Federal District Court, which also had concurrent jurisdiction to entertain it, at the sole instance of the same solicitor for appellants who now asserts that such removal was improper and affords ground for reversing the decree which the tribunal of his own choice rendered against him.

A motion to remand the cause to the Insular Court seasonably interposed by the solicitor for appellee was strenously and successfully opposed by the same solicitor for appellants.

That the right of removal from the Insular Courts of Porto Rico to the Federal District Court for that district in certain cases has existed since the establishment of the latter Court cannot be doubted.

Act of April 12, 1900, 31 Stats. L., 77, ch. 191, sec. 34.

Whether the present case was of the class contemplated by the removal statute need not be considered, for, it appearing that the lower court had jurisdiction of the cause by reason of the fact that one or more of the parties to the controversy were citizens or subjects of a State foreign to both Porto Rico and the United States, the party who, over the objection of his adversary, successfully invoked that jurisdiction will not now be heard to complain of the exercise.

As was said by this Court in the case of *Cowley vs. Northern Pacific R. R. Co.*, 159 U. S. 569, 583:

> "The case having been removed to the Circuit Court upon petition of defendant, it does not lie in its mouth to claim that such court had no jurisdiction of the case, unless the court from which it was removed had no jurisdiction."

Counsel for appellants concede (Brief, p. 21) that "it appears from the complaint filed in the Insular District Court, and especially from the petition of removal by Juana Maria Gonzalez, the complainant in this case, at the time of the filing and commencement of the suit was an alien, and so were two of the defendants," and he bases his objection to the jurisdiction of the District Court of Porto Rico solely upon the ground that "the third defendant, to wit, Juana Maria Gonzalez, was a citizen and a resident of Porto Rico (Brief of App'ts, p. 22). But, in order that the United States District Court for the district of Porto Rico may entertain jurisdiction of a cause, it is not at all necessary that all of the parties to the controversy should be citizens or sub-

jects of a foreign State or States. It is sufficient if the parties *or either of them* possess such character.

MERITS.

The discussion of the merits of the cause in this brief will follow the order adopted in appellant's brief, and for convenience of reference the points herein discussed will be similarly numbered, beginning with the

THIRD POINT.

While it may be conceded that under the law of Porto Rico a married woman, so long as the marriage relation continues and has not been terminated by divorce or death, has no right to demand the liquidation of the conjugal partnership, that principle has no application here. It is true that at the date of the institution of this suit in the District Court of Ponce, and indeed at the time of its removal into the United States District Court, the decree of divorce between complainant Dastas and defendant Garrozi had not been passed; nevertheless such decree had been passed and had become effective, and the marriage between the parties had been terminated thereby, long before the pleadings in this case had reached a final issue.

The fact of the dissolution of the marriage relation between the parties mentioned constituted an important allegation in complainant's reformed bill of complaint, which was filed with the permission of the court and with the acquiescence of the solicitor for defendants, and the same fact was affirmatively set up by way of defense in the pleas and answers of the defendants to complainant's amended bill of complaint (R., 60, 61, 68, 69).

The method pursued by the solicitors for the respective parties to the cause in bringing about the filing of these amended pleadings is interesting, and consideration thereof

would seemingly put an end to appellants' objection under this point.

As originally instituted the suit had for its principal object the cancellation and annulment of certain sales, assignments, or transfers of real property and mortgage credits which complainant asserted belonged to the conjugal partnership, the alleged collusive transfers of which were in fraud of her rights. The plea of defendants raised issues pertinent to such object only. With respect to such issues depositions were taken, and it was developed thereby that during the pendency of the case the complainant Dastas and the defendant Garrozi had been divorced by a decree of the Supreme Court of Porto Rico on the ground of the former's adultery. Thereupon the solicitor for complainant moved the trial court for leave to amend the bill of complaint in various particulars, among others, by striking out the second paragraph thereof and substituting in its place and stead the following averment:

> "Your oratrix represents that on the 9th day of June, 1902, a decree of divorce was entered dissolving the bonds of matrimony between her and defendant Thomas Garrozi, that upon said date your oratrix was entitled to a one-half interest of the following community property (bienes ginanciales) hereinafter set forth as well as in all other community property and assets of every kind and description" (51).

By agreement of the parties the motion filed by complainant for leave to amend her bill of complaint as aforesaid was referred to a special master to examine and report "as to whether the amendments proposed by complainant are made as to the matters of form or whether such amendments constitute a departure or substantial change of the cause of action of complainant" (55). The special master, having considered the matter, reported that certain amendments, among which was included the one last above quoted, "con-

tain matters affecting the substantial rights of the respective parties in that said amendments enlarge the amount revocable by the complainant if her theory of the law of the case should be sustained by the court; but that the same are consistent with and germane to the case of the plaintiff as made upon the issues already joined, and do not constitute a departure therefrom; said changes being devised to make the allegations of the bill conform to the details of the proof as taken before the examiner" (56). To this finding and report of the special master the defendants did not file any exceptions, and the matter having been brought to the attention of the court on a motion by complainant for leave to amend her bill of complaint in the particulars specified, and both parties being represented by their respective solicitors in open court, it was "ordered that the report of the special master be confirmed in so far as it recommends the allowance of amendments numbers one" (above quoted), etc., and complainant was given until the following rule day to file her amended bill of complaint (59). To the action of the court in thus allowing an amended bill of complaint to be filed the defendants did not except, and after said amended bill of complaint, which, among other things, contained the above quoted amendment and prayed that "an account be taken of all the foregoing properties and assets and all other property in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property belonging to the conjugal society and the value thereof, and the parts or portions thereof which correspond to your oratrix * * * and shall declare by its decree the right of your oratrix as aforesaid in and to the same" (65), had been filed, the defendants, without reserving objection, filed appropriate pleas and an answer thereto, and complainant having filed the general replication to the joint and several answer of the defendants (76), the cause was by consent of counsel "submitted to the special master for final decree" (77) upon the amended pleadings.

The defendants not having preserved of record their objections, if any they had, to the action of the trial court in permitting the bill of complaint to be so amended, and having themselves affirmatively pleaded the divorce in question as a bar to complainant's right of recovery, and having specifically denied that complainant had any right, title, or interest in the properties described "in the amended bill of complaint," and having submitted the issues so framed to the trial court for its decision, and that court having finally decided the same by entering a final decree in the cause, it was then and is now too late to raise the objection that the particular matters complained of should have been made known to the court through the medium of a supplemental bill of complaint rather than by amendments to the original bill.

By the concurrent action of the respective parties the cause in the Federal court was made to assume a new and different aspect and became in effect if not in fact a new suit.

FOURTH POINT.

UNDER THE LAWS IN FORCE IN PORTO RICO ON JUNE 9, 1902, THE DIVORCED WIFE WAS ENTITLED TO HER PROPORTIONATE SHARE OF THE BIENES GANANCIALES NOTWITHSTANDING THE DECREE OF DIVORCE WAS FOUNDED UPON HER ADULTERY.

The Civil Code of Porto Rico, which became effective October, 1889 (War Department Translation), under the sub-head of "Contracts relating to property by reason of marriage," provides as follows:

> "Art. 1315. Persons who may be joined in matrimony may, before celebrating it, execute contracts, stipulating the conditions for the conjugal partnership with regard to present and future property, with-

out any other limitations than those mentioned in this code.

"In the absence of contracts relating to property, it shall be understood that the marriage has been contracted under the system of legal conjugal partnership."

It is found as a fact in this case that the marriage was celebrated between the parties without the execution of any prior contracts (Finding 1, p. 108).

Articles 1392 to 1395, inclusive, under the heading "Conjugal partnership—general provisions," are as follows:

"Art. 1392. By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

"Art. 1393. The conjugal partnership shall always begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void.

"Art. 1394. This partnership cannot be renounced during the marriage, except in case of judicial separation.

"When the renunciation *should* take place by reason of a separation, or after the marriage has been dissolved or annulled, said renunciation shall be included in a public instrument, and the creditors shall have the right granted them in article 1001.

"Art. 1395. The conjugal partnership shall be governed by the rules of articles of partnership in all that does not conflict with the express provisions of this chapter."

Articles 1401 and 1407, under the sub-heading "Property of the conjugal partnership," are as follows:

"Art. 1401. To the conjugal partnership belong:

"1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only.

"2. That obtained by the industry, salaries, or work of the spouses or of either of them.

"3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

"Art. 1407. All the property of the marriage shall be considered as partnership property until it is proven that it belongs exclusively to the husband or to the wife."

Article 1408, under the sub-heading "Charges and obligations of the conjugal partnership," is as follows:

"The conjugal partnership shall be liable for:

"1. All the debts and obligations contracted during the marriage by the husband, and also for those contracted by the wife in the cases in which she can legally bind the partnership.

"2. The arrears or interest, matured during the marriage, of obligations which affect the private property of the spouses as well as the partnership property.

"3. The minor repairs or of mere preservation, made during the marriage, to the private property of the husband or the wife. Extensive repairs shall not be chargeable to the partnership.

"4. Extensive or minor repairs to the property of the partnership.

"5. The support of the family and the education of the children in common, and of the legitimate children of one of the spouses only."

Articles 1412 to 1414, under the sub-heading "Administration of the conjugal partnership," are as follows:

"Art. 1412. The husband is the administrator of the conjugal partnership, with the exception of what is prescribed in article 59.

"Art. 1413. Besides the powers the husband has as administrator, he may alienate and encumber for a valuable consideration the property of the conjugal partnership without the consent of the wife.

"Nevertheless, every alienation or agreement which

the husband may make with regard to said property in contravention of this code or in fraud of the wife shall not prejudice her nor her heirs.

"Art. 1414. The husband may dispose by will of his half of the property of the conjugal partnership only."

Article 1417, under the sub-heading "Dissolution of the conjugal partnership," is as follows:

"The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

"The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership.

"The conjugal partnership shall also terminate in the cases mentioned in article 1433."

And articles 1433, 1434, 1435, and 1439, under the sub-heading "Separation of the property of the spouses and its administration by the wife during marriage," are as follows:

"Art. 1433. The husband and the wife may request the separation of the property, and it shall be decreed, whenever the spouse of the plaintiff should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or should have given cause for divorce.

"In order that the separation may be decreed, it shall be sufficient to present the final judgment rendered against the guilty or absent spouse in each one of the three cases above mentioned.

"Art. 1434. After the separation of property has been ordered the conjugal partnership shall be dissolved, and its liquidation shall be made according to the provisions of this code.

"Nevertheless, the husband and the wife shall mutually attend to their support during the separation, and to the support of the children, as well as to their education, each one in proportion to his or her respective means.

"Art. 1435. The power to administer the property

of the marriage granted to the husband by this code shall continue in force if the separation should have been granted at his instance; but, in such case, the wife shall not have any right to the subsequent profits of the partnership, and the rights and obligations of the husband shall be governed by the provisions of sections second and third, chapter third of this title.

"Art. 1439. If the separation should cease by reconciliation, in cases of divorce, or because in the other cases the causes have disappeared, the property of the marriage shall again be governed by the same rules as before the separation, without prejudice to what may have been legally done during the same.

"At the time of reunion the spouses shall specify in a public instrument the property which they bring anew, and said property shall be that forming the private estate of each one of them respectively.

"In the case mentioned in this article, all said property shall always be considered as new property brought to the marriage, even though it be the same, either partially or wholly, which existed before the liquidation made by reason of the separation."

The provisions of said Civil Code declaring the "Effects of annulment of marriage and of divorce" are as follows:

"Art. 67. The civil effects of suits and decrees concerning annulment of marriage and divorce can only be obtained before the ordinary tribunals.

"Art. 72. The final decree of annulment shall produce, with regard to the property of the marriage, the same effects as a dissolution by death; but the spouse who has acted in bad faith shall have no rights to the profits of the conjugal partnership.

"Art. 73. A decree of divorce shall produce the following effects:

"1. The separation of the spouses.

"2. The children to remain or be placed under the authority and protection of the innocent spouse.

"When both are guilty, a guardian shall be provided for the children in accordance with the provisions of this code, and if the decree has not pro-

vided otherwise, the mother in every case shall have the children under three years of age in her charge.

"Upon the death of the innocent spouse, the guilty one shall recover the parental authority and his or her rights, when the cause which gave rise to the divorce should have been adultery, violence to the person, or grave insult. When the cause is different, a guardian shall be appointed for the children. The deprivation of the parental authority and of its rights does not exempt the guilty spouse from the fulfillment of the obligations which this code imposes upon him or her with regard to the children.

"3. The guilty spouse shall lose all that may have been given or promised him or her by the innocent one or by any other person in consideration for the latter; and the innocent spouse shall keep all that he or she has received from the guilty one, being permitted, besides, to claim forthwith all that may have been promised by the same.

"4. The separation of the property of the conjugal partnership, and the loss of the administration of that of the wife, if the husband should have it, and is the one who gave cause for the divorce.

"5. The retention by the innocent husband of the administration, if he should have it, of the property of the wife, who shall only be entitled to support."

The Spanish law, including the Civil Code above referred to, made a sharp distinction between an "annulment of marriage" (Nulidad del matrimonio) and a divorce, and while the final decree of annulment is declared to produce with regard to the property of the marriage "the same effects as a dissolution by death" (article 72), it is expressly declared (article 104) that "Divorce only produces the suspension of the life in common of the spouses," and that (article 73, sec. 2, par. 3) "upon the death of the innocent spouse, the guilty one shall recover the parental authority and his or her rights, when the cause which gave rise to the divorce should have been adultery."

Article 1429 of the Civil Code of 1899 declares that—

> "When the conjugal partnership is dissolved by the annulment of the marriage, the provisions of articles 1373, 1378, 1417, and 1440 shall be observed; and should it be dissolved by reason of the separation of the property of the spouses the provisions of chapter sixth of this title shall be observed." (See articles 1433 *et seq., ante.*)

Assuming for the purpose of argument that the above quoted provisions of the Civil Code of 1899 were in force and governed the relations of the spouses from and after the passing of the decree of divorce on June 9, 1902, it does not at all follow therefrom that the guilty wife, in case of divorce for her adultery, thereby forfeited her rights in the *bienes gananciales* or her power to enforce the same. It is true that in such case she would forfeit "all that may have been given or promised * * * her by the innocent one (spouse) or by any other person in consideration for the latter," but this refers only to voluntary gifts as between the spouses and does not refer to *bienes gananciales.*

It is expressly provided by article 73 of the Civil Code, so greatly relied upon by appellants, that—

> "A decree of divorce produces the following effects:
> "1. The separation of the spouses.
> * * * * * *
> "4. The separation of the property of the conjugal partnership and the loss of the administration of that of the wife, if the husband should have it and is the one who gave cause for a divorce.
> "5. The retention by the innocent husband of the administration if he should have it, of the property of the wife, who shall only be entitled to support."

The clauses relating to the continued administration by the innocent wife or husband, as the case may be, in the foregoing relate only to the administration of the separate

estates of the respective spouses and do not at all refer to "the property of the conjugal partnership."

Articles 72 and 1417 of this Civil Code do not apply in this case, as they clearly refer to actions for the annulment of the marriage on the grounds set forth in title IV, chapter 3, section 3, of said code.

While it may be conceded that by the laws of Spain in force anterior to October, 1889 (Las Partidas), a divorce on the ground of adultery of the wife operated to deprive her of her interests in the *bienes gananciales,* the Civil Codes greatly mitigated the rigor of this rule, and it has been held by the Supreme Court of Madrid (Sentencia of May 30, 1901) that after dissolution of the conjugal partnership by divorce or death the *bienes gananciales* cannot be disposed of by the surviving spouse until a liquidation of the conjugal partnership shall first have taken place.

It is suggested with deference, that the learned commentator Mucius Scaevola, in his commentaries upon the above point, does not sustain the contention of appellants. A full translation of the matters appearing in his commentaries on the Civil Code, volume 22, pages 374 and 375, referred to on page 30 of appellants' brief, is as follows:

> "*Divorce.*—The few ancient authors who examine this point do it lightly, stating only that the communion between the consorts will not take place when the divorce has been caused by the guilt of the wife, because there is lacking then the reason of the law which grants the communion for the sake of the mutual interests of the two consorts.
>
> "The code contradicts itself in its articles 73 and 1433 as to the effects of the divorce upon the conjugal property, because the former establishes of course as a consequence of the sentence the separation of the shares in the conjugal property and the loss of the administration of that of the wife if it was in the possession of the husband and the latter was the offender, adding that the innocent husband would keep the administration of the share of the

wife in the conjugal property, while in the article 1433 it is discretionary with the innocent consort the division of the property, expressly soliciting it from the court, and only as a consequence of this petition the conjugal property is dissolved, according to the article 1433.

"The opposition between these two articles, is, notwithstanding, more apparent than real, because they coincide in substance, the only difference existing in the necessity that the division of property should be requested by the innocent consort in order that, as a consequence, the community property should be dissolved.

"The fact is that the divorce declared by final judgment produces the cessation of the legal partnership, without prejudice that if the husband is the innocent consort he has, according to said article 1433, the power of administering the conjugal property and of receiving all the profits, without any deduction than the necessary amount for the wife's alimony."

And on pages 376 and 377 of the same volume, the learned commentator, under the heading of "Adultery," says:

"All these laws from whose differences of form great difficulties may be encountered are without value even to the substance thereof considering the juridical status of the code, which does not distinguish adultery, in so far as its civil effects are concerned, from the other causes which gave rise to divorce. Adultery by itself, even since it has been made the subject of criminal punishment, will not produce the consequences of terminating '*los gananciales*,' which can only be brought about when a civil sentence of divorce accords, as above stated, the separation of *los bienes*."

So it appears that the effect of the divorce for the adultery of the wife is simply to stop the further participation of the wife in the future conjugal profits which may be earned by the husband and gives rise to the obligation of separating the

interest of the husband and wife in the community property, as provided in article 73 of that code.

It is conceded that under the provisions of section 3 of article 73 the divorced wife in such case forfeits "all that may have been given or promised her by" the innocent husband, but *bienes gananciales* are not gifts. They constitute whatever may have been acquired during the existence of the marriage relation on the theory of profits resulting from joint labors.

Escriche, volume 2, page 86, defines *bienes gananciales* and the dominion of the respective spouses thereover as follows:

> *"Conjugal Property.*—That acquired through a common title, lucrative or onerous, by the husband and wife, during the marriage and while they live together, or that acquired by the husband and wife, or either of them, during the marriage or while living together, by purchase or through their work or industry, as well as the products of their separate property brought by each of them and that acquired by each of them by some lucrative title during the existence of the conjugal partnership.
>
> "Everything acquired by the husband and wife is common property to both. 'Everything gained or bought by the husband and wife, while living together, according to ley 1, tit. 3, lib. 3 del Fuero Real (Royal Franchise) is owned by both in common.'
>
> "Though the husband may have more property than the wife, or the wife more property than the husband, either real or personal property, according to law 3, d. tit. y lib., the products are common property to both of them. Laws 1 & 3, tit. 4, lib. 10, Nov. Recop."
>
> "Husband and wife have the dominion of the conjugal property: Laws 1 and 4, tit. 4, lib. 10, Nov. Recop.; with the difference that the husband possesses it by right of possession and by right of disposition, and the wife only possesses it by right of possession, acquiring the right of disposition when the matrimony is dissolved. For this reason the wife cannot give or sell said property during the matri-

monial relation, but the husband may, without the consent of the wife, dispose of the property in favor of living persons and even make moderate gifts for just causes; but excessive and capricious gifts are null, as well as alienations made with the object of defrauding the wife, who in this case shall have the right of action against the property of the husband and against the holder of the things alienated.

"The conjugal property belongs in common to husband and wife, and they possess or own it by halves, although the husband may have more separate property than the wife, or the wife more than the husband, although either of them may acquire afterwards more property than the other, and in short, although the property may be acquired through business or work by one of them only; because in virtue of the matrimonial relation it is established between the two consorts a legal partnership, different from any other, by which they mutually exchange their acquisitions. Laws 1, 2, 3, 4 & 5, tit. 4, lib. 10, Nov. Recop."

And Scaevola in his commentaries (volume 2, p. 213) upon section 3 of article 73 of the code, limits the forfeitures therein provided for to gifts (donaciones)—*e. g.*:

"Nearly all the references made relate exclusively to adultery, which was the principal reason accepted by the ancient legislation for divorce. The guilty party was punished thereby, specially the wife, with the forfeiture of all properties or part thereof. *The new laws are more liberal, in the determination of the causes for divorce as well as in its consequence.*

"In general the effects of the decree of divorce are the same as those of the complaint, with a more definite nature. It is clearly expressed by No. 1 of this section, stating as first effect the separation of the parties."

* * * * * * *

"The guilty party loses, according to the provisions of number three, all those things given to him by the innocent party or by him promised, or by any person

in consideration of the innocent one; and on the contrary the innocent preserves all that which he has received from the guilty one, having besides the right to claim all promises made by the guilty to him. It is not necessary to say anything regarding gifts or promises when these are made by any one but the husband or wife, but when by either of them, it must be taken into consideration that it is necessary to have legal capacity to acquire. Now, the second subdivision of section 50 provides (referring to marriages made against the provisions of section 45) that none of the parties can receive from the other anything by way of gift or legacy, except the exceptions therein named, so that in this kind of marriage the guilty party will not lose any gift made to him or what has been promised to him, and the innocent one will not be able to keep that what he has received from the guilty nor could he make or enforce any promise because the parties, as provided in said number 2, section 50, cannot receive anything the one from the other by way of gift or legacy."

This view and the contentions of the appellee with respect to the right of the wife, although laboring under the disability of a sentence of divorce on the ground of adultery, to bring about a dissolution of the conjugal partnership and the judicial ascertainment of her interest in the *bienes gananciales*, is strengthened by the provisions of the Civil Code of Porto Rico approved March 1, 1902, and still in force. It is by the provisions of that code which was in force on June 9, 1902, the date of the divorce, that the rights of the principal parties to this controversy are to be made.

While many sections and provisions of the codes of 1889 and 1902 are not only similar but identical, the provisions of the latter code (title IV, chapter 5), under the subheading of the "Effects of divorce," differ materially from the provisions of article 73 of the code of 1889, as will readily appear from the following:

"SEC. 173. A divorce carries with it a complete dissolution of all matrimonial ties, and the division of

all property and effects between the parties to the marriage.

"SEC. 174. The party against whom the judgment is rendered shall forfeit to the party obtaining the divorce all gifts which the other party may have conferred upon such party during the marriage, or when the same was contracted, and the innocent party shall retain everything which has been acquired from the other."

Sections 1, 2, 4, and 5 of article 73 of the Code of 1889, except in so far as above appears, have no counterpart in the provisions of the Civil Code of 1902. The Code of 1902, among other things, pertaining to "The rights and duties between married persons," provides as follows:

"SEC. 159. The husband shall be the administrator of the conjugal property, except when stipulated otherwise. * * * Nevertheless the real property belonging to the conjugal community may not be alienated or burdened, such a transaction being null except when effected with the mutual consent of both parties to the marriage.

"SEC. 160. Each one of the parties to a marriage is the owner and administrator of his own property.

"SEC. 161. The husband is the legal representative of the conjugal community.

"The wife may contract, and appear in court, in all cases referring to the defense of her own rights and property, to the discharge of the *patria potestas*, guardianship or administration conferred on her by the law, and the exercise of a profession, employment or occupation."

"SEC. 163. Marriage is dissolved in the following cases:

"(1) By the death of the husband or wife;

"(2) By divorce legally obtained;

"(3) If the marriage be declared null.

"SEC. 164. The causes for divorce are as follows:

"(1) Adultery on the part of either of the parties to the marriage."

The effects of a divorce, as declared by this Code (1902), have been above set forth (secs. 173-174).

The provisions of the Code of 1902 relating to property rights "By reason of marriage" correspond to the similar provisions in the Code of 1889, as follows:

Section 1282 of the Code of 1902 is identical with article 1315 of the Code of 1889 (*ante*).

Sections 1310 to 1313, inclusive, of the Code of 1902 relating to "Conjugal partnerships, general provisions," are identical with articles 1392 to 1395, inclusive, of the Code of 1889 (*ante*).

Sections 1316 and 1322 of the Code of 1902, relating to "Property of the conjugal partnership," are identical with articles 1401 and 1407 of the Code of 1889 (*ante*).

Sections 1327 and 1328 of the Code of 1902, relating to the "Administration of the conjugal partnership," differ somewhat from articles 1412 and 1413 of the Code of 1889 on the same subject, the former sections reading as follows:

> "SEC. 1327. The husband is the administrator of the conjugal partnership, with the exception of what is prescribed in sections 81 and 82 of chapter 6, title V of Book First of this Code."
>
> (MEM.—This reference is seemingly incorrect.)
>
> "SEC. 1328. Notwithstanding the power which the husband has as administrator, he shall not have the power to give, to sell and to bind for a consideration the real estate of the conjugal partnership without the express consent of the wife.
>
> "Every sale or agreement which the husband may make in respect to the said property in violation of this section and the other provisions of this code, or in fraud of the wife, shall be null and shall not prejudice his or her heirs."

Section 1330 of the Code of 1902, on the "Dissolution of the Conjugal partnership," corresponds in all respects with article 1417 of the Code of 1889 (*ante*).

Section 1331 of the Code of 1902, on the "Liquidation of the property of the conjugal partnership," provides that—

> "Upon the dissolution of the partnership an inventory shall immediately be made;" * * *
>
> "SEC. 1332. The inventory shall include specifically for the purpose of collating them the sums which having been paid by the conjugal partnership are to be deducted from the capital of the husband or of the wife.
>
> "The amount of the gifts and alienations which must be considered illegal or fraudulent, in accordance with section 1328, shall also be brought to collation."
>
> "SEC. 1334. After the debts, charges, and obligations of the partnership have been paid, the capital of the husband and of the wife shall be liquidated and paid, in so far as the inventoried estate may reach, making the proper deductions according to the rules which are elsewhere prescribed (*in*) with regard to dowry.
>
> "SEC. 1335. After the deductions from the inventoried estate specified in the preceding section have been made, the remainder of the same estate shall constitute the assets of the conjugal partnership.
>
> "SEC. 1337. The net remainder of the partnership property shall be divided, share and share alike, between the husband and wife, or their respective heirs.
>
> "SEC. 1342. In the absence of a specific declaration of the marriage contract, the separation of the property of the spouses during the marriage shall not take place except by virtue of a judicial decree."

Sections 1343 and 1344 of the Code of 1902 are identical with articles 1433 and 1434 of the Code of 1889 (*ante*), but articles 1435, 1436, and 1437 of the Code of 1889 (*ante*), continuing in force the right of administration by the husband over the marriage property after a divorce had been granted at his instance, find no counterpart whatever in the Code of 1902.

So it would seem that, irrespective of what may have been the effect of a divorce because of fault on the part of the wife, under the *Partidas*, or even under the more enlightened rule of the Civil Code of 1889, it is certain that the Code of 1902, which must be given controlling effect in the present case, gives no indication of an intention to impose any forfeiture whatever upon the divorced wife, except in so far as pure gifts received by her during the marriage or on account of it, may be concerned. The provisions for the dissolution of the conjugal partnership declare specifically that after all proper deductions from the inventoried estate shall have been made "the net remainder of the partnership property *shall be divided share and share alike* between the husband and wife or their respective heirs," and this would seem to end all controversy as to whether the divorced wife can maintain an action like the present. It cannot be assumed that the Legislative Assembly of Porto Rico, after declaring the rights of the spouses in the net remainder of the conjugal property with such particularity, intended to leave the matter without any provision for the enforcement of such rights. Section 1342 of the Code of 1902 undoubtedly contemplates an application to a court of competent jurisdiction for the purpose of bringing about a separation of the conjugal property, and it cannot be that the right of either spouse to compel such a separation upon the lines prescribed should depend upon the assent or joint application of the other.

FIFTH POINT.

It is conceded that under the letter of the Civil Code of 1889 and of 1902 the husband is the administrator of the conjugal partnership, and that dispositions of the assets of the partnership made by him *in good faith* cannot be questioned by the wife, but it is expressly provided by the code of 1889 (section 1413) that—

"Every alienation or agreement which the husband may make with regard to said property in contravention of this Code *or in fraud of the wife shall not prejudice her nor her heirs.*"

Section 1414 of that Code permits the husband to dispose of "his half of the conjugal partnership only" by will.

Section 159 of the Code of 1902 likewise declares that the husband shall be the administrator of the conjugal property "except when stipulated otherwise," but it also expressly declares that the real property belonging to the conjugal community shall "not be alienated or burdened" except with the consent of the wife; and this prohibition is repeated and emphasized in section 1328.

It is objected by appellants under this point that the trial court erred in refusing to allow the appellant Garrozi in his accounts some $22,000 alleged by him to have been necessarily spent in the course of several visits to Europe, one-half of such sum, viz., $11,000, being awarded to appellee as a part of the conjugal profits.

The trial court found as a fact (finding 24, p. 112) that Garrozi made several trips to Europe during the continuance of the marital partnership, "and spent large sums of money by reason thereof, as near as can be determined from his testimony, the following amounts;" aggregating in all $47,000; and "that such extravagant expenditures were not either necessary or reasonable, and hence not a proper charge against the property of the marital partnership."

The court further found "that twenty-five thousand dollars ($25,000) would have been a liberal expenditure under the circumstances for a man in defendant Garrozi's condition of life," and concluded that $22,000 of the amount of $47,000 should be charged against his separate property (113).

In support of their objections and contentions under this point, appellants quote largely from Ballinger on Community Property and Scaevola's Commentaries on the Code.

We have no quarrel with either of these authorities, nor with the quotations therefrom made by solicitors for appellants, for in each there is distinctly recognized the principle upon which the judgment of the trial court in disallowing the claimed credit of $22,000 rests.

Ballinger, while declaring the husband to be "the active partner or sole business agent of the marital establishment," possessed of "the exclusive administration of all the ganancial property," with power to "hypothecate or alienate it, untrammeled by any authority existing in the wife," says also that "the only restriction upon his power of disposition, or even of dissipating it, was *that* the alienation must not be made maliciously *or in fraudulent diminution of the gananciας*. The law in making the rights of the wife as to administration passive merely, presupposes the capacity and prudence of the husband as its active agent, and at the same time is designed to preserve domestic harmony" (Appellants' Main Brief, p. 35).

And so Scaevola, after observing that even on the dissolution of the marriage "no charges ought to be made against the husband, in any case, of the infinity of small expenses even made at his simple caprice, *provided they were of the current and natural order in the administration which any person of average diligence would make*" (Appellants' Brief, p. 36), and that the power of administration of the marriage community properly conferred upon the husband is more ample than any other administration admitted by the Code, concludes significantly as follows:

> "As long as he does not forget to decorously maintain the family and to attend to the necessary repairs of the property in the terms established by article 1408, and as long as he does not alienate the community property or its fruits fraudulently against the interest of the wife, according to the disposition of article 1413, the powers of the husband are nothing less than absolute. Article 1412 does not say where there is the limit of the power of the husband, in refer-

> ence to the administration. But the disposition of article 1413 is general as to administration and to alienation, and, its doctrine may be reduced to one general principle; the husband may do everything that he pleases, alienating, incumbering and simply managing the community property and its profits, as long as his acts are not inspired by the intent to defraud his wife" (Appellant's Brief, p. 37).

It is apparent that the court below was of opinion that the ascertained extravagances of Gorrozi in connection with his European excursions amounted to a "fraudulent diminution of the gananciás," an alienation "fraudulently against the interest of the wife," at least to the extent of $22,000, and hence the refusal to allow the husband such sum in his account and the direction to make it a charge against his separate estate.

SIXTH POINT.

This point would seem to be sufficiently answered by referring to sections 1332 to 1337, inclusive, of the Civil Code of 1902, which provide for the "Liquidation of the property of the conjugal partnership" and the division of the net remainder, "share and share alike, between the husband and wife, or their respective heirs."

In the present case full liquidation was had by a judicial proceeding involving an inventory and accounting, in the course of which the husband had the fullest opportunity of presenting and establishing every credit to which he felt himself entitled.

SEVENTH POINT.

While the action of the trial court in making the allowances complained of by appellant under this point may be open to question, it would seem to be both just and equitable, for if the conduct of the husband in maliciously or fraudu-

lently diminishing the ganancias against the interest of the wife compelled her to litigate to protect her rights, it would seem to be but fair to make her some allowance on account of expenses necessarily incurred in the course of the litigation.

While costs in actions at law are governed by fixed and arbitrary rules, in equity the award or denial of costs is always in the discretion of the court (Riddle *vs.* Mandeville, 6 Cranch, 86), and courts of chancery in general follow the rule of the civil law, *victus victori in expensis condemnatus est*, and they decree the payment of costs by the unsuccessful to the successful party.

The provision of U. S. Revised Statutes, section 824, declaring that "on a final hearing in equity" a docket fee of $20 may be allowed to the solicitor of the prevailing party is not necessarily exclusive of other allowance by the court—*e. g.*, in cases of costs paid out of a fund in court.

Trustees *vs.* Greenough, 105 U. S., 527.
Central R. R. Co. *vs.* Pettus, 113 U. S., 116.

The allowance of counsel fees in the present case had no relation to legal services rendered in the divorce proceeding, but related solely to services rendered in the equity court in the wife's attempt to conserve the conjugal assets and to procure their liquidation pursuant to law. It was through her efforts and such services that the fraudulent transfers were set aside and the property taken into the possession of the court by the appointment of a receiver.

Under the authority of the two cases last above cited, the action of the trial court in this particular also should be sustained and affirmed.

EIGHTH POINT.

Appellants' objection under this point is without merit. There is no room here for any argument based upon a supposed presumption of fraud.

The trial court found a series of facts (findings 5 to 21, inclusive) concerning the alienation of the properties and mortgage credits specified by complainant Dastas and found by the court to be community property, and, based upon such facts, the court further found—

> "that all the foregoing transfers described in findings numbered 16, 17, 18, 19, and 20 were made by the parties thereto, (viz., the appellant Garrozi and one or other of the other appellants in each instance) without consideration, with knowledge of whatever rights the complainant (Dastas) may be found to have in said properties as community property of the said marital partnership, *and for the fraudulent purpose of defrauding said complainant out of whatever share she might have in said properties*" (112).

NINTH POINT.

The errors assigned under this objection and the exceptions to the rulings of the court upon which such assigned errors rest are too numerous to permit of their discussion *seriatim* in this brief.

In the absence of the full evidence, it cannot be reasonably judged whether the appellants were in fact prejudiced by any of the matters complained of, for in no instance is it stated that the evidence either admitted or rejected over appellants' objection was the only evidence on the contested point.

Many of appellants' objections will not stand the test of criticism, for example, number 1, on page 114 of the record. There the question was clearly objectionable by reason of

its form, being an assertion by counsel which the witness was possibly expected to confirm, although the exception contains no statement to that effect; and so with objection number 2, the bearing of which upon the evidence generally or upon the findings of fact is not shown by the context, and, so far as this record is concerned, the question covered by objection numbered 3 would appear to have been utterly immaterial.

The trial court had before it the entire evidence adduced in the cause, and was the better able to judge of the value and effect of the matters objected to.

Upon the whole case, it is respectfully submitted that the judgment of the district court of the United States for the district of Porto Rico should be affirmed.

FRANCIS H. DEXTER,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Solicitors for Appellee.

FILE COPY.

Office Supreme Court, U. S.
FILED.
NOV 14 1906
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 72.

TOMAS GARROZI, JUANA MARIA GONZALEZ, AND DOMINGO PIAZZI, APPELLANTS,

vs.

JUANA DASTAS, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEE.

Some question having been raised at bar as to the date upon which the Civil Code of Porto Rico of 1902 became effective, we respectfully submit for the consideration of the court the following certificate of the Secretary of Porto Rico, the original of which has been filed in the office of the clerk of this court:

THE PEOPLE OF PORTO RICO,
OFFICE OF THE SECRETARY.

I, Regis H. Post, Secretary of Porto Rico, do hereby certify that section 41 of the Political Code, as in force previous to March 12, 1903, provided that "every statute, unless

a different time is prescribed therein, takes effect from its passage"; and do further certify that the Civil Code of Porto Rico, as shown by the original bill filed in the office of the Secretary, was approved by the Governor on the 1st day of March, 1902.

In testimony whereof I have hereunto set my hand and affixed the seal of Porto Rico this 31st day of October, 1906.

[Great Seal of Porto Rico.]

REGIS H. POST,
Secretary of Porto Rico.

Section 55 of the Political Code of Porto Rico (Rev. Stats. and Codes of Porto Rico, 1902, p. 317), which was approved by the Governor of Porto Rico March 1, 1902, the date of the approval of the Civil Code in question, declares that—

"The Secretary of Porto Rico shall promulgate all proclamations and orders of the Governor and all laws enacted by the Legislative Assembly."

"SEC. 56. The Secretary shall record and preserve:

* * * * * * *

"(*b*) The acts and resolutions passed by the Legislative Assembly.

* * * * * * *

"(*c*) The great seal of Porto Rico."

"SEC. 58. In addition to the duties prescribed in the foregoing, it is the duty of the Secretary:

* * * * * * *

"(6) To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, public record or instrument filed, deposited or recorded in his office, provided the issuing of such copy shall not be prejudicial to public interests."

Section 42 of said Political Code (Rev. Stats. and Codes of Porto Rico, p. 312) declares that "every statute, unless a different time is prescribed therein, takes effect from its passage."

As the Civil Code of Porto Rico upon which appellee so largely relies in this case was passed and approved March 1, 1902, and no other or different time was prescribed therein for its going into effect, under the above-quoted provision of the Political Code it "took effect from its passage."

FRANCIS H. DEXTER,
FREDERIC D. MCKENNEY,
JOHN SPALDING FLANNERY,
Attorneys for Appellee.

Supreme Court of the United States.

No. 72.—October Term, 1906.

Tomas Garrozi, Juana Maria Gonzalez, and Domingo Piazzi, Appellants, *vs.* Juana Dastas. | Appeal from the District Court of the United States for the District of Porto Rico.

[January 7, 1907.]

Mr. Justice White delivered the opinion of the Court.

In the District Court of Ponce, in October, 1891, through a representative (next friend), Juana Dastas, alleged to be a resident of Porto Rico and a married woman, commenced this suit against her husband, Tomas Garrozi y Pietri, as also against Juana Maria Gonzalez and Domingo Piazzi y Pietri, all three of whom were alleged to be residents of Porto Rico. We shall hereafter speak of the plaintiff as the wife and the principal defendant Garrozi as the husband.

As far as essential to be considered, the facts alleged, the cause of action relied on and the proceedings had, up to the pleading by the defendants, are summarized as follows: The marriage took place in May, 1886, and, as no antenuptial contract was made, their property relations were governed by the community system under the code of Porto Rico. They lived together until November, 1898, when they separated, and the wife, under the direction of the husband, resided in a house provided by him. There she lived until December, 1899, when, owing to the failure of the husband to support her, she removed to Ponce.

The husband in 1901 sued for a divorce on the ground of the wife's adultery and she, by a reconventional demand (cross bill), prayed for a divorce on the same ground, and because of cruel treatment. In this suit the court awarded the wife $75 a month alimony *pendente lite*. This not having been paid, the wife issued execution and realized from a sale of certain furniture one month's alimony. The remainder of the alimony up to the commencement of this suit, aggregating $225, and 598 pesos, Porto Rican currency, the amount of legal expenses incurred by the wife in defending the divorce suit and which had been allowed by the court, was yet unpaid. These amounts were uncollected because of the apparent insolvency of the husband. This insolvency was, however, only apparent, because there was a large amount of real and personal prop-

erty belonging separately to the husband, or to the community, which the husband had, with the object of defrauding the wife, apparently disposed of by simulated transfers to the defendants Maria Gonzalez and Domingo Piazzi. The character and extent of this property were detailed as well as the various alleged simulated contracts, which it was averred had been made concerning the same. The prayer was that the contracts in question be set aside as mere fraudulent simulations, so as to enable the wife to exert her rights therein or thereagainst. The court admitted the petition to be filed and authorized the suit by the wife in the name of her representative or next friend. Before the day for pleading the husband, alleging himself to be a citizen and subject of France, and that by operation of law the wife was of the same nationality, obtained an order for removal to the court below. Subsequently the two other defendants also prayed and were allowed a removal. On the filing of the record a motion to remand was made based upon the fact that the husband's petition for removal contained no averment of residence. The court refused to remand and allowed an amendment alleging the residence of the husband to be in France.

Without attempting to state the many pleadings which followed, the ultimate issues, and the action of the court may be thus summarized: The petition of the wife was amended and reformed, authority being given by the court for the prosecution of the suit on her behalf by her representative or next friend. The petition in its final form was less prolix, and the allegation was added that the divorce proceeding between the husband and wife, referred to in the original petition, had gone to the Supreme Court of Porto Rico, and had by that court been finally decided, decreeing a divorce in favor of the husband. The prayer for relief was amended to conform to this situation; that is, it was prayed not only that the simulated contracts be set aside, but, further, that the community be liquidated, and the wife be awarded her share. The defense, as finally made on the part of the husband, as well as the other defendants, was an averment of the good faith and reality of all the contracts alleged to have been simulated. Moreover, the husband denied that there was community property, because nothing had been acquired during marriage which fell into the community, and because all the property which he possessed, even assuming that the assailed contracts were simulated, was separate property, either owned at the date of the marriage or thereafter acquired as a reinvestment of separate funds. It was, moreover, specially alleged that, as the divorce had been decreed against the wife on account of her adultery, she had forfeited all her interest in the community, if any community property existed. Besides, the right of the wife to compel the liquidation of the community, even if she had not forfeited her right to a participation in the community assets, if any, was specially challenged.

The court appointed an examiner, who took and reported the testimony. Under a stipulation and order the cause was referred for report to a special master upon the facts and law. Before the master reported the wife prayed a receiver and an injunction, upon averments that the two defendants, to whom it was charged the property of the husband had been seemingly transferred or encumbered by simulated contracts, were dealing with the same so as to dissipate the estate and frustrate the relief prayed. A receiver was appointed, and the defendants were enjoined as prayed. The report of the special master, as to both the facts and law, substantially sustained the claims of the wife. Exceptions taken to the report were overruled and the report was confirmed. The court below adopted the facts found by the master and reiterated them in the findings in the nature of a special verdict, made for the purposes of the present appeal. By those findings all the charges of fraudulent simulation relied upon by the wife were found to be true, and, as a legal conclusion, all the property and assets to which the simulated contracts related were held to belong to the husband. Concerning the community and its liquidation, it was found, as a matter of fact, that the wife at the time of the marriage had no property, and subsequently acquired none, whilst the husband at the time of the marriage was the owner of various assets and described property, which was found to have been of the value, at the time of the marriage, of $71,500. The net property of the husband at the date of the dissolution of the marriage, including all reinvestments or avails of his separate property existing at the time of the marriage, and, allowing for community debts, was found by the court to be $77,000, thus leaving $5,500 as the acquet or gain of the community, which was subject to be divided equally between the husband and wife. In addition, the court found that during the marriage the husband had spent, out of the revenues of his property, which revenues fell into the community, the sum of $47,000, during various trips made by him to Europe, and that these expenditures by the husband, from revenue which belonged to the community, were unreasonable to the extent of $22,000. From the facts thus found, as a matter of law, it was concluded that the $22,000 should be treated as an existing acquet of the community, subject to be equally divided between the parties. The sum, therefore, of the community property for distribution was fixed at $27,500, the wife's share, therefore, being $13,750. The court in its final decree annulled the simulated contracts, and decreed the property to which such contracts related to belong to the husband, and, fixing the sum of the community as above stated, a money decree was entered in favor of the wife for her share thereof, $13,750. The decree reserved the right of the court to make such further orders as might be necessary, the receiver was directed to make full report, and a special master was appointed with power

to sell the property in the custody of the receiver, if necessary, to pay the decree in favor of the wife. On the day after the entry of the final decree, on motion of the wife, the court passed a further decree in her favor, directing the payment to her, first, of the sum of $598, awarded to her by the District Court of Ponce as her expenses in the divorce litigation, and the sum of $133.50, interest thereon to the date of the decree; second, the sum of $885, due for alimony awarded by the District Court of Ponce to the date of the decree of divorce; and, third, the sum of $1,500, on account of solicitors' fees in the pending litigation—a total of $3,116.50. The receiver was directed to pay these several sums out of any money in his hands, and in default of sufficient funds execution to enforce against the husband was authorized.

The court, in its findings, has stated the rulings which were excepted to with respect to the admission or rejection of evidence, accompanied with such portions of the evidence as it deemed adequate to enable a review of such rulings.

Before coming to the merits we must dispose of three preliminary questions. *First.* The suggestion of a want of jurisdiction in this court is without merit. (*Royal Insurance Company* v. *Martin*, 192 U. S. 149.) *Second.* The contention that the court below was without jurisdiction, and that the cause, therefore, should not be passed upon on the merits, but should be remanded to the court below, with directions to remand to the local court from which it was removed, is also without merit. That the case was within the original jurisdiction of the United States District Court of Porto Rico clearly results from the broad grant of jurisdiction conferred by the third section of the act of March 2, 1901 (31 Stat. 953), reading as follows:

"That the jurisdiction of the district court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

The assertion of the want of jurisdiction in the court below rests, however, not upon a denial of power in that court to have entertained the controversy if the suit had been originally brought there, but upon the contention that as a defendant other than the husband was a resident and citizen of Porto Rico, the cause was improperly removed from the local court. And the proposition goes to the extent of insisting that such want of jurisdiction may be asserted by the person who procured the removal, who resisted the effort to remand, and when the want of jurisdiction is only suggested after trial and final decree. The premise upon which these con-

tentions are based is a portion of the text of the thirty-fourth section of what is known as the Foraker Act, (Act of April 12, 1900, 31 Stat. L. 84,) which provides that—

"The laws of the United States relating to appeals, writs of error and certiorari, removal of causes, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the District Court of the United States [for Porto Rico] and the courts of Porto Rico."

Without so deciding, we concede, for the sake of the argument, that where the power to remove from a State court to a court of the United States is restricted by statute to a certain class of cases, a removal operated contrary to the statute does not divest the State court of jurisdiction, and, therefore, does not confer jurisdiction on the court to which the cause has been wrongfully removed, even although the cause may have been one of which such court might have taken jurisdiction originally. So, also, we concede for argument sake that in such a case the party wrongfully procuring the removal may escape the effect of a judgment rendered against him in the forum to which he voluntarily resorted, by suggesting after judgment the want of power to remove. But these concessions are not decisive of the case at bar, because of the extent of the jurisdiction conferred upon the United States Court in Porto Rico by the act of 1901; that is to say, in consequence of the enlarged character of the jurisdiction conferred by that act, and the obvious departure which it manifests from the principles controlling the jurisdiction of a United States court as contradistinguished from a State court, we do not think the rule which demarks the line between the courts of the United States and State courts within the removal act should be held applicable to Porto Rico to the extent which might have obtained had the act of 1901 not been enacted. We conclude, therefore, that where a case is removed from the local Porto Rican court to the United States court, over which case the latter court would have had jurisdiction as to all the parties impleaded if the case had been there originally brought, even though the removal was irregular, the party who caused the removal cannot be heard after judgment against him to assert that the United States court was wanting in jurisdiction solely on the ground that the case was erroneously removed.

3. The objections to rulings made by the court in admitting and rejecting evidence are numerous. We shall not undertake to review them in detail or state at length our conclusions concerning them, contenting ourselves with saying that after examining them all we think they are without foundation, either because fundamentally unsound or because the objections concerned not the admissibility but the mere weight of the evidence offered or rejected, or because the record is not in such a condi-

tion as to enable us to overcome the strong impression we form that no prejudicial error resulted from the rulings complained of.

The conclusive effect of the facts found below narrows the issues. Thus the finding that the contracts were fraudulent simulations sustains the legal conclusion that the property to which the contracts related belonged to the husband, and therefore that subject is put out of view. Again, as the facts found concerning the sum of the property owned by the husband at the date of the marriage and the amount owned by him at the date of the dissolution of the community by the divorce, sustain the conclusion that the difference between the two was an acquet or gain of the community to be divided equally, that question need not be further considered. In order, therefore, to dispose of the entire controversy it will be necessary to decide only four questions: First, whether the wife, as a consequence of the judgment of divorce rendered against her had forfeited her interest in the community, if there was any such interest. Second, whether error of law was committed in crediting the community with $22,000, the amount expended by the husband for traveling and medical expenses during the years 1889 and 1890, and during the years 1895 to 1898, both inclusive, upon the ground that such expenditures were unreasonable and extravagant, and therefore created an obligation on his part to return the amount to the community as an acquet or gain thereof. Third, if there was due the wife any amount on account of her interest in the community, and such interest had not been forfeited, was she entitled as a divorced wife to provoke a liquidation of the community and to a decree in her favor for the amount, if any, of her interest in such community? Fourth, did the court below err as a matter of law, in addition to giving the wife a decree for her interest in the community, in allowing her the sum of the alimony *pendente lite* decreed in her favor by the local court up to the date of the divorce, the sum of her expenses in the divorce suit which had been approved by the local court, and an additional sum of $1,500 for the services of the counsel of the wife in the cause.

1. It may be conceded that by the law of Spain, prior to the adoption of the Spanish Civil Code, the wife against whom a judgment of divorce for adultery was decreed forfeited all right to her share in the community existing between herself and husband. But that rigorous rule was not incorporated into the Spanish Civil Code, which was in force in the island of Porto Rico when the territory was acquired. (Spanish Code of 1889, War Department translation, Title 4, sec. 5, article 67 *et seq.*) Such forfeiture, moreover, did not obtain in the Porto Rican Civil Code, adopted after the acquisition of the island by the United States, and which was in force in that island when the decree of divorce, which was here involved, was rendered. (Civil Code of Porto Rico for 1902, Title 5, chap. 5, sec-

tions 173, 174.) To the contrary, the Code of 1889 provided that, in case of a divorce for adultery, the guilty spouse should forfeit or lose, not his or her interest in the community, but "all that may have been given or promised him or her by the innocent one, or by any other person, in consideration for the latter." (Code of 1889, article 73, paragraph 3.) And a similar provision was incorporated in the Code of 1902, as follows:

"The party against whom the judgment is rendered (of divorce) shall forfeit to the party obtaining the divorce all gifts which the other party may have conferred upon such party during the marriage, or when the same was contracted, and the innocent party shall retain everything which has been acquired from the other." (Sec. 174.)

Both these provisions were plainly intended to depart from the rule of forfeiture prevailing in the more ancient Spanish law and to incorporate the rule of limited forfeiture, as existing in the Louisiana (article 156) and Napoleon (article 299) Codes, a similar provision to which has been enacted in the codes of some other countries, which have modelled their codes on the Code Napoleon. (De Saint-Joseph, concordance, vol. 1, p. 24 *et seq.*) This conclusion is reinforced by the consideration that, at the time of the adoption of the Spanish and Porto Rican Codes, the provision of the Napoleon Code on that subject had been conclusively determined not to operate a forfeiture of the community property. See authorities collected in note to article 299 in the Fuzier-Herman edition of the Code Napoleon, Paris, 1896.

The argument advanced in the brief of one of the counsel, that, despite the change in the code to which we have referred, the old rule of forfeiture should be held to obtain, because of the provision of article 1417 of the Code of 1889 and section 1330 of the Code of 1902, saying: "The spouse who by bad faith has been the cause of the nullity (of the marriage) shall not have a share in the common property," rests upon a mere misconception. The provision relied on in both the codes relates, not to the dissolution of a marriage by a decree of divorce or for any other cause, but to the recognition of the nullity of a seeming marriage for causes which have operated to prevent the marriage from having ever existed. In other words, the distinction between the article relied upon and the other articles to which we have previously referred is that which obtains between a decree of a court dissolving a marriage which has existed and a decree establishing that there never had been a marriage to dissolve. The pertinency of this distinction again becomes manifest when it is observed that a similar distinction and consequence exists in the Code Napoleon.

2. Owing to an apparent ambiguity in the finding of fact concerning the liability of the husband to the community for $22,000 it becomes necessary, before reviewing the legal conclusion of the court below on that subject, to fix the exact meaning of the facts found upon which that

legal conclusion was based. As a preliminary to so doing we reproduce in the margin* the finding of fact on the subject, as well as the legal conclusion drawn by the court therefrom.

Whilst there are expressions in the finding referred to which, isolatedly considered, might lead to the inference that it was the intention of the court to find that the husband had not expended the money, but had concealed it or yet had it in his possession, we think the context of the finding and the result of the other findings establish that the court intended to and did find that the money was expended, and that the legal conclusion as to the liability of the husband to the community was arrived at because it was deemed that the expenditure of the money by the husband was unreasonable and extravagant. We say this results from the context, because, taking the whole finding, it seems to us clear that the purpose of the court was as stated. We say also it results from the other findings, because the facts found as to the sum of the property owned by the husband at the time of the marriage and the sum possessed by him at the time of the divorce exclude, by necessary implication, the possession by the husband of the $22,000.

It is provided in both the Code of 1889 (article 1412) and the Code of 1902 (sec. 1327) the husband "is the administrator of the conjugal

---

* That said defendant Garrozi made several trips to Europe during the continuance of his marital partnership, and spent large sums of money by reason thereof, which were, as near as can be determined from his testimony, the following amounts:

In 1889	$10,000 00
In 1890	7,000 00
In 1895	5,000 00
In 1896-98	25,000 00
Total	$47,000 00

Said defendant claims in his testimony that these trips to Europe and the expenditure of these large sums of money was rendered necessary by reason of his serious and continued illness. But said testimony is not substantiated by that of any other credible witness, while, if true, it could have been easily proven by the testimony of some of the physicians who attended him, and who must have had full knowledge of his condition during these times. But even granting that the journeys were necessary to defendant's health, the court is forced to the conclusion, either that said defendant has exaggerated the amounts expended or that such extravagant expenditures were not either necessary or reasonable, and hence not a proper charge against the property of the marital partnership.

It seems that twenty-five thousand dollars ($25,000.00) would have been a liberal expenditure under the circumstances for a man in defendant Garrozi's condition of life.

The court therefore concludes that twenty-two thousand dollars ($22,000 00) of the amount should be charged against the separate property of defendant Garrozi.

partnership." By the first of these codes (article 1413) this power of the husband was so complete as to endow him with authority to sell and encumber, not only all the movable, but also the immovable property of the community. In the second code, however, (sec. 1328,) the power of the husband to sell or encumber the immovable property is not given, except a contract to that effect is made with the consent of the wife. And by both codes all contracts of the husband in violation of definite provisions of the code or in fraud of the rights of the wife are made null and void against the wife or her heirs. (Code of 1889, article 1413; Code of 1902, section 1328.) The provisions in both codes making the husband the administrator of the community are here again like unto those obtaining in other countries where the community system prevails. (Code Napoleon, article 1421; Louisiana Code, article 2404.) The question, therefore, is this: Is the power of the husband, as the head and master and administrator of the community, in its nature so restricted that in the absence of express limitation he can, after the dissolution of the community, be called to account and compelled to return to the community money which he has actually expended during the existence of the community, because, in the judgment of a court, such expenses may be deemed to have been not suitable to his situation in life, extravagant, or even reckless? To answer this question in the affirmative would be to destroy the whole fabric of the community system as prevailing, not only under the Spanish and Porto Rican Code, but as obtaining in those countries of the continent of Europe and here where that system prevails. We need not consider whether the community was derived from the Roman law, from an express provision of the early Saxon law, or from the ancient customary law of the continent. For, however derived, the very foundation of the community and its efficacious existence depends on the power of the husband, during the marriage, over the community and his right, in the absence of fraud or express legislative restriction, to deal with the community and its assets as the owner thereof. The purpose of the community, as expounded from the earliest times, whilst securing to the wife on the dissolution of the marriage an equal portion of the net results of the common industry, common economy and common sacrifice, was yet, as a matter of necessity, during the existence of the community, not to render the community inept and valueless to both parties by weakening the marital power of the husband as to his expenditures and contracts, so as to cause him to be a mere limited and consequently inefficient agent. See a very full citation of authority in Journal du Palais Repertoire, verbo. Communauté, pp. 739, 741, *et seq.*

In determining the authority of the husband as to the common property two considerations are essential: The character of the right of the wife to the common property during the existence of the marriage and

the scope of the power of the husband during the same period. In speaking on the nature of the right of the wife, Troplong says:

"The rights of the wife are dormant during the marriage, because the husband is charged to watch over and conduct the affairs of the conjugal society. But this right, which is inert as long as the husband is at the head of the affairs of the community, becomes active when the marital authority ceases to exist. The wife is like a silent partner, whose rights arise and reveal themselves when the partnership ceases." (Troplong Contrat de Mariage, vol. 2, p. 136, No. 855.)

Under the law of France prior to the Napoleon Code the extent of the power of the husband as to the community property was so great that it was considered in theory that the rights of the wife, in or to the community, were not merely dormant during the marriage, but had no existence whatever. In other words, the doctrine was upheld that the wife during the existence of the community had but a mere hope or expectancy, and hence no interest whatever in the property or goods of the community until the community was dissolved. (Dumoulin, Sur l'art. 25, Cout. de Paris.) And from this arose the expression that the community was a partnership which only commenced on its termination. As the result, however, of the right conferred upon the wife by some of the customs of France before the Code Napoleon, and also expressly given by that code, (Code Napoleon 1443 *et seq.*) to procure a decree dissolving the community when the affairs of the husband were in such disorder as to entail risk upon the wife it is the generally accepted doctrine under the Napoleon Code that the wife's interest in the community prior to the dissolution is subsisting, though dormant. But this implies no limit on the power of the husband whilst the community exists. In other words, although the right to a separation of property arises from the reckless conduct of the husband, thus affording a means of guarding against the consequences of such conduct in the future, the right to ask a separation does not give rise to the inference that the husband, after the dissolution of the community, may be held to account for money expended by him during the community because of reckless or extravagant conduct. Speaking on this subject, Rodiere and Pont (Traité du Contrat de Mariage) say (p. 596, No. 657):

"The husband can then sell [the immovable property of the community] by onerous title; he has in this respect an absolute power, and if, in disregard of the confidence which the law reposes in him, the husband, in disposing of the property, is impelled by the wish to indulge extravagant tastes or to provide for reckless dissipation, and not by the purpose of protecting the rights of the wife, the latter, even under these circumstances, has no recourse but to obtain a judicial termination of the community."

Referring to the power of the husband over the community, Troplong says:

"This power of the husband, which effaces the personality of the wife, and which is manifested by the name of lord and master of the community, given to the husband; this power, which seems like unto an absolute sovereignty, exists as well in the relations of the spouses between themselves as in their dealings between third parties. In effect, the husband can dissipate the goods of the community; he can lose, destroy, break and dilapidate. *Maritus potest perdere, dissipare, abuti;* this is an elementary axiom of the Palace (of Justice). The wife has no right to call the husband to account, no damage to obtain for his acts. Hence it is true, indeed, that the husband is more than an administrator; he is an administrator *com libera.*" (Ib. p. 138, No. 158.)

See to the same effect the copious collection of authority found under article 1421 of the Code Napoleon, in the Fuzier-Herman edition of that code, *supra.*

That there is a substantial similarity between the law of the community under the Napoleon Code and the law on the same subject of Spain, prior to the Civil Code, and as now existing under that and the Code of Porto Rico, was conceded in the argument of the appellant. Indeed, that argument refers to and rests on some of the provisions of the Napoleon Code. Besides, when it is considered that the ancient Spanish law, and that law as formulated in the Code of 1889 or in the Porto Rican Code of 1902, confers no authority upon the wife to obtain a judicial dissolution of the community merely because of the disorder of the husband's affairs, it follows that the power of the husband under the Spanish system is in principle more extensive than it is under the Code Napoleon and the law of the countries which have followed that code. The practical identity of the husband's general authority, as head and master of the community, under the law of Louisiana, the Code Napoleon and the Spanish law was clearly expounded by the Supreme Court of Louisiana, in *Guice* v. *Lawrence,* (2 La. Ann. 226,) as follows:

"The laws of Louisiana have never recognized a title in the wife during marriage to one-half of the acquets and gains. The rule of the Spanish law on that subject is laid down by Febrero with his usual precision. The ownership of the wife, says that author, is revocable and fictitious during marriage. As long as the husband lives and the marriage is not dissolved, the wife must not say that she has *gananciales,* nor is she to prevent the husband from using them, under the pretext that the law gives her one-half. But, *soluto matrimonio,* she became irrevocably the owner of one undivided half, in the manner provided by law for ordinary joint ownership. The husband is, during marriage, *real y verdadero dueno de todos, y tiene en el efecto de su dominio irrevocable.* (Febrero Adic. tomo 1 y 4, part 2d, bk. 1st, chap. 4, parag. 1, nos. 29 and 30; Pothier, Communaute, p. 35 and following; 12 Toullier, chap. 2, nos. 22 to 31; 14 Duranton, Droit, Franc. p. 281 and foll.; 10 Dalloz, Jurisp. p. 198 and fol.)

"The provisions of our code on the same subject are the embodiment of those of the Spanish law, without any change. The husband is head and

master of the community, and has power to alienate the immovables which compose it by an encumbered title, without the consent or permission of his wife. (Civil Code, art. 2373.)"

True it is that in the Porto Rican Code of 1902 there was inserted a provision, previously commented on, (section 1328) limiting the power of the husband to dispose of the immovable property of the community without the consent of the wife. But this express limitation as to one particular class of property, by inverse reasoning, is a reaffirmance of the power of the husband as head and master of the community in all other respects. The contention that because both by the Code of 1889 and of 1902 acts done by the husband as head and master of the community in fraud of the wife shall be void, therefore the expenses of the husband made during the community are subject to be reviewed on the dissolution of the community because of their unreasonable character is without merit. The fraud referred to of necessity relates to acts done by the husband beyond his lawful authority, or which, if within his authority, have been done for the purpose of enriching himself or his separate estate or some third person, and which, therefore, whilst seemingly acts of community administration, are really not of that character.

3. The contention that the wife, even after the dissolution of the marriage, was without power to obtain the liquidation of the community and a payment to her of her share thereof, is based upon what is asserted to be the correct interpretation of articles 73, 1733, 1434 and 1435 of the Code of 1889. By these articles, it is insisted, where the dissolution of the marriage has been decreed because of the fault of one of the parties, the separation of property does not follow as a legal right in favor of the party for whose wrong conduct the divorce has been decreed, and may only be allowed by a court at the request or option of the one in whose favor the decree was rendered. And it is, moreover, insisted that if the divorce has been rendered in favor of a husband and against a wife for her fault, and a separation of property has been thereafter decreed at the instance of the husband, the power of the husband to administer the wife's share of the community remains whilst her interest in future acquets or gains disappears. But this reduces itself to the contention that in the case stated the community is dissolved yet continued. But whilst this reduction may point to the want of coherency in the proposition it is no reason why the code should not be enforced, if so it is plainly written. We do not stop to analyze the texts of the Code of 1889, relied on, for we think they are not controlling, even if they have the peculiar meaning contended for. We so conclude because of a change made by the Code of 1902. As we have already said, we are of the opinion that that code was in effect at the date of the rendering of the divorce decree. Now, that code not only eliminated the provisions of article 73 of the Code of 1889 relied on, but substituted a

wholly different provision, directly repugnant to the contention we are considering. The provision referred to is section 173 of the Code of 1902, saying, "A divorce carries with it a complete dissolution of all the matrimonial ties and the division of all property and effects between the parties to the marriage." The argument made in the brief of one of the counsel that, even although the wife was entitled to a liquidation of the community and to a decree for her share the court below erred in giving a money judgment in her favor, because in any event it could only have lawfully awarded an aliquot share of the community property subject to be subsequently realized by a partition in kind or by licitation (sale) is unsound. As to the merit of the contention, if any, as a general proposition, we are not called upon in this case to express an opinion. We say this because, as a necessary result of the findings below, all the property either belonged to the husband at the date of the marriage or was afterwards acquired by him as a reinvestment of funds derived from such property owned by him at the marriage. It follows, therefore, that the rights of the wife arose simply either from an increased value of property or assets brought by the husband into marriage or as a result of the falling into the community of the revenues of the property of the husband. Under these circumstances we think the decree below was right.

4. The amount of the decree for alimony *pendente lite* and for expenses incurred by the wife in the divorce suit had been sanctioned by the local court and were binding upon the husband. We see no reason, therefore, why the court below should not have allowed those items. So far as the sum of $1,500 for counsel fees in the pending litigation which the court allowed as a charge against the husband, we have been referred to no authority sustaining the right to allow it and our own researches have enabled us to discover no sanction for such an award.

It follows that whilst the court below was right in allowing the wife the sum of $2,750 as her share of the acquets and gains of the community as established by the findings of fact, the court was wrong in allowing the $22,000, and the $1,500 attorney's fee. The decree below must therefore be reversed and the cause be remanded with directions to enter a decree for the $2,750 and the alimony and expenses incurred in the divorce suit with the approval of the court as previously allowed, but rejecting the claim for $22,000 and $1,500, the costs of this court to be borne by the appellee and those of the court below by the appellant.

Reversed and remanded.

True copy.

Test:

Clerk Supreme Court, U. S.